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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 273

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS UNION, LOCAL NO. 886, AFL-
CIO

No. 324

LOCAL 850, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL-CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 273, PETITION FOR CERTIORARI FILED JULY 19, 1957

NO. 324, PETITION FOR CERTIORARI FILED JULY 30, 1957

CERTIORARI GRANTED OCTOBER 14, 1957

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 13,406.

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Petitions to Review and Set Aside, and on Request for
Enforcement of, an Order of the National Labor Relations
Board

JOINT APPENDIX

Case No. 16-CC-47

In the Matter of

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Complaint

It having been charged by American Iron and Machine Works Company, 518 North Indiana Avenue, Oklahoma City, Oklahoma, hereinafter referred to as American Iron, under dates of September 23, 1954, and September 24, 1954, that General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL, 2910 Northwest 12th Street, Oklahoma City, Oklahoma, hereinafter referred to as Respondent Teamsters, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act; the General Counsel for the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the 16th Region of the Board, hereby alleges as follows:

1. Respondent Teamsters is a labor organization within the meaning of Section 2, Subsection (5) of the Act.
2. American Iron is and has been at all times material hereto a corporation duly existing by virtue of the laws of the State of Oklahoma, having its principal office and place of business at 518 North Indiana Avenue, Oklahoma City, Oklahoma, and maintaining two

other places of business, 601 North Indiana, and 901 South High Avenue, Oklahoma City, Oklahoma, and is now and has been at all times herein mentioned continuously engaged at said places of business in the manufacture of oil field equipment.

3. American Iron in the course and conduct of its business operations during the past 12-month period, which period is representative of all times material hereto, manufactured, sold and shipped oil field equipment valued in excess of \$1,000,000.00 from its Oklahoma City plants to points outside the State of Oklahoma.

4. A copy of the original Charge hereinabove referred to was served on the Respondent Teamsters on September 25, 1954, and a copy of the First Amended Charge hereinabove referred to was served on the Respondent Teamsters by registered mail on September 28, 1954. A copy of said Charge and Amended Charge are attached hereto as Exhibits "A" and "B" and are made a part hereof.

5. At all times material hereto Gillette Motor Transport, Inc., herein called Gillette; D. C. Hall Transport, Inc., herein called Hall; Lee Way Motor Freight Lines, herein called Lee Way; Santa Fe Trails Transportation Company, herein called Santa Fe, and Time, Inc., herein called Time, were common carriers for hire engaged in the business of hauling freight by motor vehicle under license from the Interstate Commerce Commission. Each of said common carriers maintain terminals, docks or loading facilities in Oklahoma City, Oklahoma, where they accept, load and unload freight. Each of said common carriers also maintain terminals, docks and loading facilities in other 474 states of the United States where they accept, load and unload freight, and are engaged at all such places in the business of transporting freight by said motor vehicles in and between various states of the United States.

Such common carriers commonly carry freight for American Iron.

6. At all times material hereto Respondent Teamsters has been the bargaining representative of the dock employees and drivers of Gillette, Hall, Lee Way, Santa Fe, and Time at their respective Oklahoma City terminals where they are engaged in the business set forth above in Paragraph 5.

7. Lodge 850, International Association of Machinists, AFL, 617 Southwest 29th Street, Oklahoma City, Oklahoma, hereinafter referred to as Machinists, is a labor organization within the meaning of Section 2, Subsection (5) of the Act, and at all times material hereto is and has been the collective bargaining representative of American Iron production and maintenance employees.

8. Since on or about September 15, 1954, Machinists, the collective bargaining representative of American Iron production and maintenance employees, has been engaged in a strike at American Iron premises in Oklahoma City as aforesaid, concerning terms and conditions of employment of American Iron production and maintenance employees. In connection with said strike, the Machinists has picketed American Iron's three places of business located at Oklahoma City, as set forth in Paragraph 2, where the employees work that the Machinists represent.

9. At no time material hereto have the Machinists been the collective bargaining representative of any employees of American Iron who have picked up freight for American Iron at the aforesaid common carrier's places of business or delivered freight of American Iron to the said common carriers for transportation. There is no dispute between Machinists and American Iron concerning wages, hours or other terms or conditions of employment of such employees of American Iron.

10. At no time material hereto has Respondent Teamsters been the collective bargaining representative of any employees of American Iron.

11. At no time material hereto has Respondent Teamsters had a labor dispute with American Iron or any of the above common carriers concerning the wages, hours or other terms or conditions of employment of any employees of American Iron or any of the respective common carriers.

12. Since on or about September 16, 1954, Respondent Teamsters by and through its agents, including Santa Fe Drivers' Steward, J. W. Jakeway, has induced and encouraged, despite the opposition of Santa Fe, the employees of Santa Fe to refuse to haul American Iron freight which freight had been loaded in and upon the trucks and trailers which these employees were to operate.

13. Since on or about September 21, 1954, all of the checkers, drivers, forklift operators, winch operators, dockmen and helpers of Santa Fe have refused to receive, check, haul or otherwise handle American Iron freight.

14. Upon each and every occasion named above in Paragraphs 12 and 13, Santa Fe by and through its agents, J. P. Smith and Charles W. Dean, has specifically instructed said employees mentioned above in Paragraphs 12 and 13 to receive, check, haul or otherwise handle said American Iron Freight.

15. On or about September 17, 1954, Respondent Teamsters by and through its Santa Fe Dock Steward, Clifford M. Trokel, orally instructed all Santa Fe dock employees to refuse to handle freight to or from American Iron.

476 16. On or about September 26, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell

and Clifford Troxel, again instructed all Santa Fe dock employees to refuse to handle American Iron Freight.

17. On or about October 6, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Robert Hawkins, Gillette Dock Steward, orally instructed Gillette dock employees to refuse to receive, check or otherwise handle American Iron Freight.

18. On or about October 6, 1954, the Gillette dock employees refused to receive, check or otherwise handle American Iron freight.

19. On or about October 6, 1954, after the incident related in Paragraph 18 above, Gillette by and through their Local Freight Agent, Mr. Berrong, instructed said Gillette dock employees to go ahead and receive, check and otherwise handle American Iron freight despite their refusal, whereupon said Gillette employees did receive, check or otherwise handle American Iron freight.

20. Since on or about September 17, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Roy McGilliard, Time Dock Steward, by appeals and oral instructions has induced and encouraged Time dock employees to refuse to receive, check or otherwise handle American Iron freight.

21. Since on or about October 5 or 6, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Roy McGilliard, and its Time employees union members, has attempted to keep Time supervisory personnel from handling the American Iron freight by oral statements, threats, and appeals.

477 22. Since on or about September 16, 1954, Respondent Teamsters, by and through its agents, Ralph Mitchell and Bobby L. Wilkerson, Hall Dock Steward, has by oral instructions, threats and appeals

induced and encouraged Hall dock employees to refuse to receive, check or otherwise handle American Iron freight.

23. Since on or about September 16, 1954, Hall dock employees have refused to receive, check or otherwise handle American Iron freight although Hall has specifically instructed said employees to handle American Iron freight.

24. By its conduct set forth above in Paragraphs 12 through 23 and by orders, instructions, directions, appeals, by-laws, union policy, threats, and other means, Respondent Teamsters since on or about September 16, has engaged in and has induced and encouraged the employees of Santa Fe, Gillette, Time and Hall to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport or otherwise handle or work on goods, articles, materials, or commodities or to perform services.

25. An object of Respondent Teamsters' conduct set forth above in Paragraphs 12 through 24 is to force or require Santa Fe, Gillette, Time, and Hall, respectively, despite their respective opposition, to cease using, selling, handling, transporting or otherwise dealing in products of American Iron and to cease doing business with American Iron.

478 26. By the acts described above in Paragraphs 12 through 24 for the reasons set forth above in Paragraphs 24 and 25, Respondent Teamsters did engage in and is thereby engaging unfair labor practices within the meaning of Section 8 (b), Subsection (4) (A) of the Act.

27. By the acts described above in Paragraphs 12 through 24 and for the reasons set forth in Paragraphs 24 and 25, and by each of said acts the Respondent Teamsters did restrain and coerce and is restraining and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is there-

by engaging in unfair labor practices within the meaning of Section 8 (b), Subsection (1) (A) of the Act.

28. The activities of the Respondent Teamsters described above in Paragraphs 12 through 24, occurring in connection with the operations of the employers named above in Paragraphs 2, 3 and 5, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

479. 29. The acts of the Respondent Teamsters described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (b), Subsections (1) (A) and (4) (A) and Section 2, Subsections (6) and (7) of the Act.

WHEREFORE, the General Counsel for the National Labor Relations Board has caused this Complaint to be signed and issued by the Regional Director for the 16th Region on the 23rd day of October, 1954, against General Drivers, Chauffeurs, Warehousemen & Helpers Union, Local No. 886, AFL, Respondent herein.

EDWIN A. ELLIOTT

Edwin A. Elliott, *Regional Director*
National Labor Relations Board
Sixteenth Region

(Seal)

(General Counsel's Exhibit 1-J)

489

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

Case No. 16-CC-47

In the Matter of

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Answer

Comes now the General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 886, AFL, hereinafter referred to as Respondent Teamsters, and enters the following Answer to the Complaint filed herein:

1. The Respondent Teamsters insofar as its knowledge of the facts, admit the allegations contained in the Complaint, from paragraph 1. (one) to paragraph 20. (twenty) inclusive.
2. The Respondent Teamsters admit paragraph 21. of the Complaint, except they deny that they have used any threats against anyone.
3. The Respondent Teamsters admit paragraph 22. of the Complaint, except they deny they have used any threats against anyone.
4. The Respondent Teamsters admit insofar as its knowledge is concerned that paragraph 23. is true.
5. The Respondent Teamsters deny generally and specifically, paragraphs 24. to paragraphs 29. inclusive.
6. Further answering the Respondents Teamsters state that the activities of its agents and business representatives have been directed to the sole purpose of complying with

10
its contract governing the situation with the employers involved herein: They deny that in so doing they have violated the National Labor Relations Act.

Dated this 1st day of November, 1954.

Signed FRANK GRAYSON, Attorney for
Respondent Teamsters

490

Address of Attorney

410 Leonhardt Building
Oklahoma City, Oklahoma

STATE OF OKLAHOMA } ss.
OKLAHOMA COUNTY } ss.

Frank Grayson, being first duly sworn, deposes and says: That he is the duly authorized agent and attorney for the Respondent Teamsters; that he has read the foregoing answer and that the allegations and statements therein contained are true and correct to the best knowledge and belief.

FRANK GRAYSON

Subscribed and sworn to before me this 1st day of November, 1954.

.....
Notary Public

My Commission expires:

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SIXTEENTH REGION

Case No. 16-CC-48

In the Matter of

LODGE 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Complaint

It having been charged by American Iron & Machine Works Company, 518 North Indiana Avenue, Oklahoma City, Oklahoma, hereinafter referred to as American Iron, under date of September 24, 1954, that Lodge 850, International Association of Machinists, AFL, 617 Southwest 29th Street, Oklahoma City, Oklahoma, hereinafter referred to as Respondent Machinists, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act, the General Counsel for the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the 16th Region of the Board, hereby alleges as follows:

1. Respondent Machinists is a labor organization within the meaning of Section 2, Subsection (5) of the Act.

481 2. American Iron is and has been at all times material hereto a corporation duly existing by virtue of the laws of the State of Oklahoma, having its principal office and place of business at 518 North Indiana Avenue, Oklahoma City, Oklahoma, and maintaining two other places of business, 601 North Indiana, and 901 South High

Avenue, Oklahoma City, Oklahoma, and is now and has been at all times herein mentioned continuously engaged at said places of business in the manufacture of oil field equipment.

3. American Iron in the course and conduct of its business operations during the past 12-months period, which period is representative of all times material hereto, manufactured, sold and shipped oil field equipment valued in excess of \$1,000,000.00 from its Oklahoma City plants to points outside the State of Oklahoma.

4. A copy of the charge hereinabove referred to was served on the Respondent Machinists by registered mail on September 28, 1954, a copy of which is attached hereto as "Exhibit A" and made a part hereof.

5. At all times material hereto Gillette Motor Transport, Inc., herein called Gillette; D. C. Hall Transport, Inc., herein called Hall; Lee Way Motor Freight Lines, herein called Lee Way; Santa Fe Trails Transportation Company, herein called Santa Fe, and Time, Inc., herein called Time, were common carriers for hire engaged in the business of hauling freight by motor vehicle under license from the Interstate Commerce Commission. Each of said common carriers maintain terminals, docks or loading facilities in Oklahoma City, Oklahoma, where they accept, load and unload freight. Each of said common carriers also maintain terminals, docks and loading facilities in other states of the United States where they accept, load and unload freight, and are engaged at all such places in the business of transporting freight by said motor vehicles in and between various states of the United States. Such common carriers commonly carry freight for American Iron.

6. Since on or about September 15, 1954, Respondent Machinists, the collective bargaining representative of American Iron production and maintenance employees, has

been engaged in a strike at the three American Iron premises in Oklahoma City as set forth in Paragraph 2, concerning terms and conditions of employment of American Iron production and maintenance employees. In connection with said strike, the Respondent Machinists has freely picketed at the three American Iron places of business located at Oklahoma City as set forth in Paragraph 2, where the employees work that Respondent Machinists represents.

7. At no time material hereto has Respondent Machinists been the collective bargaining representative of any employees of American Iron who have picked up freight for American Iron at the aforesaid common carrier's places of business or delivered freight of American Iron to the said common carriers for transportation. There is no dispute between Respondent Machinists and American Iron concerning the wages, hours, or other terms or conditions of employment of such employees of American Iron.

8. In furtherance of its dispute with American Iron referred to in Paragraph 6 above, Respondent Machinists, since on or about September 15, 1954, has followed American Iron's trucks, driven by employees not within the bargaining unit represented by Machinists, to the docks, terminals and loading facilities of the aforesaid common carriers named above in Paragraph 5 and has maintained a picket or pickets at said common carriers' premises while the trucks of American Iron were present. Coincident with the maintaining of the picket or pickets on the carriers' premises, Respondent Machinists by and through its Business Agent, Ed Foster, and its pickets, orally requested employees of the aforesaid carriers to refuse to accept, check, load or unload or otherwise handle the freight tendered to the carriers by American Iron for shipment at the respective carriers' docks.

9. On or about September 16, 1954, Respondent Machinists by and through its Business Agent, Ed Foster, induced and encouraged employees of Time to fail and/or refuse to receive, check or otherwise handle American Iron freight by threatening an employee of Time with the loss of his Teamsters' union card, if he received, checked or otherwise handled the American Iron freight, and thereby caused the said Time employee to fail and/or refuse to receive, check or otherwise handle American Iron freight.

10. On or about September 17, 1954, Respondent Machinists maintained a picket on the premises of Lee Way during the time an employee of American Iron was present on Lee Way premises delivering an American Iron freight shipment with his private car and a trailer.

11. On or about September 18, 1954, Respondent Machinists, by and through one of its American Iron picket captains at American Iron premises, requested an employee of Santa Fe to see that Santa Fe employees did not handle American Iron freight.

12. By the conduct set forth in Paragraphs 8, 9, 10 and 11 above, Respondent Machinists, since on or about September 16, 1954, has engaged in, and by picketing, orders, instructions, directions, appeals and other means, has induced and encouraged the employees of Gillette, Hall, Lee Way, Santa Fe, and Time to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services.

13. An object of Respondent Machinists' conduct set forth in Paragraphs 8, 9, 10, 11 and 12 above was and is to force or require Gillette, Hall, Lee Way, Santa Fe, and Time to cease using, handling, transporting, or otherwise dealing in the products of American Iron and to cease doing business with American Iron.

14. By the acts described above in Paragraphs 8, 9, 10, 11, and 12 and for the reasons set forth above in Paragraphs 12 and 13, Respondent Machinists did engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

15. By the acts described above in Paragraphs 8, 9, 10, 11, and 12 for the reasons set forth above in Paragraphs 12 and 13 and by each of said acts the Respondent did restrain and coerce and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (b), Subsection (1) (A) of the Act.

16. The activities of the Respondent Machinists described above in Paragraphs 8, 9, 10, 11 and 12, occurring in connection with the operations of the employer described above in Paragraphs 2 and 3 and in connection with the operations of the employers described in Paragraph 5 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

485 17. The acts of the Respondent Machinists described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (b), Subsections (1) (A) and (4) (A), and Section 2, Subsections (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board has caused this Complaint to be signed and issued by the Regional Director for the Sixteenth Region on this 23rd day of October, 1954, against Lodge 850, International Association of Machinists, AFL, Respondent herein.

EDWIN A. ELLIOTT

Edwin A. Elliott, *Regional Director*
National Labor Relations Board
Sixteenth Region

(Seal)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SIXTEENTH REGION

Case No. 16-CC-47

In the Matter of

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Case No. 16-CC-48

In the Matter of

LODGE 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Motion for Bill of Particulars

Lodge No. 850, International Association of Machinists, A.F.L.¹, moves the National Labor Relations Board² to direct the General Counsel of the Board, by the Regional Director for the Sixteenth Region, to furnish the Union with a Bill of Particulars on the allegations of the Complaint issued in the subject case.

Under date of October 23, 1954, the General Counsel, by the Regional Director, issued and caused to be served upon the Union, a Complaint alleging that the Union had engaged in certain unfair labor practices under the provisions of the National Labor Relations Act of 1947, 61 Stat. 161. The allegations of the Complaint do not set

¹ Hereinafter referred to as the Union.

² Hereinafter referred to as the Board.

forth the alleged conduct of the Union with sufficient particularity to enable the Union to know what particular conduct is complained of, to enable it to adequately prepare in defense of such allegations at the hearing called for in the Notice of Hearing accompanying the Complaint, and to prepare an Answer to the Complaint.

498. For these reasons the Union hereby moves for a Bill of Particulars to the allegations of the Complaint as follows:³

7. State the name and job classification of each employee of the American Iron and Machine Works Company who allegedly has picked up freight for the American Iron and Machine Works Company at the premises of the common carrier listed in Paragraph 5 of the Complaint or delivered American Iron freight to said common carrier's premises. Also state the date of each alleged pickup or delivery of freight as to each said employee, where each pickup and each delivery of freight was made, and the particulars thereof.

8. State the names of each individual who allegedly followed the American Iron and Machine Works Company trucks and the dates on which the alleged occurrences took place, which carrier the trucks drove to, and the circumstances thereof. Also state the names and job classifications of the employees to whom Ed Foster, Business Agent and pickets of the Union, allegedly directed oral requests that they refuse to accept, check, load or unload or otherwise handle the freight tendered to the carriers by the American Iron and Machine Works Company for shipment. Also state the date each said alleged request was made, where each took place; and the particulars thereof. Also state the names of each Union picket who allegedly made such requests, together with the date, place, and circumstances under which such alleged requests were made.

³ The numbers used in this Motion refer to paragraph numbers as they appear in the Complaint.

9. State the names and job classifications of the employees of the Time Company who Business Agent Ed Foster allegedly induced and encouraged to fail and/or refuse to receive, check or otherwise handle American Iron freight. Also state the place where each such alleged inducement took place and the particulars thereof.

10. State the name and job classification of the American Iron employee who was allegedly delivering freight of American Iron and Machine Works with his private car and trailer. Also state where this alleged picketing took place and the particulars thereof.

499 11. State the name of the picket captain who allegedly requested an employee of Santa Fe to see that Santa Fe did not handle American Iron freight. Also state the name of the employee of Santa Fe to whom this alleged request was made and his job classification, and the particulars thereof.

12. State the dates, names of the Union representatives, names, job classifications, and employers of the persons induced, and the place and circumstances of alleged picketing, orders, instructions, directions, appeals and other means by which respondent Machinists have induced, and encouraged the employees of Gillétte, Hall, Lee Way, Santa Fe, and Time to engage in strikes or concerted refusals in the course of their employment to use, manufacture, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services.

14. State how and in what manner precisely, by the acts referred to in this paragraph, the Union committed unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act, as alleged in this paragraph, specifying names, places, dates and the particulars thereof.

15. State how and in what manner precisely, by the acts referred to in this paragraph, the Union committed unfair labor practices within the meaning of Section 8 (b) (1) (A)

of the Act, as alleged in this paragraph, specifying names, places, dates and the particulars thereof.

16. State how and in what manner precisely the activities of the Union have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and free flow of commerce.

17. State how and in what manner precisely by the alleged acts referred to in this paragraph the Union committed unfair labor practices within the meaning of Section 8 (b), Subsection (1) (A) and (4) (A), and Section 2, Subsection (6) and (7) of the Act.

The Union hereby requests the time for filing an answer to this Complaint be extended in a reasonable time after the motion for this Bill of Particulars is ruled on, and the requested information has been submitted.

Respectfully submitted,

~~Louis~~ P. Poulton

Louis P. Poulton, GWC

Attorney for and in behalf of

Lodge No. 850, International

Association of Machinists, AFL.

Dated: October 27, 1954

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SIXTEENTH REGION

Case No. 16-CC-47

In the Matter of

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Case No. 16-CC-48

In the Matter of

LODGE 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Response to Motion for Bill of Particulars

A Motion for Bill of Particulars having been filed with the Regional Director for the Sixteenth Region of the National Labor Relations Board and the Chief Trial Examiner of the National Labor Relations Board, and said motion having been referred to Trial Examiner Sidney Feiler, for ruling pursuant to the applicable rules and regulations of the National Labor Relations Board, and said Motion having been granted only in part in regard to two paragraphs of said Motion insofar as it requested that Respondent Machinists be furnished with the date, place and by whom oral requests as referred to in Paragraph 8 of the Complaint were made; and insofar as the name or identifying description of the picket captain referred to in Paragraph 11 of the Complaint, and said Motion having been expressly denied in

all other respects, comes now Leonard L. Pickering, Counsel for General Counsel of the National Labor Relations Board, and files the following Bill of Particulars:

I.

In reply to that part of Paragraph 8 of said Motion for Bill of Particulars, which was granted by the Trial Examiner, the following oral requests to refuse to accept, check, load or unload, or otherwise handle American Iron Freight were made by the following people on behalf of the Respondent Machinists at the respective dates and places:

a. Ed Foster—On or about September 16, 1954, at the Oklahoma City terminals of the following carriers: Santa Fe, Time, Gillette, Hall, and Lee Way.

On or about September 17, 1954, at the Oklahoma City terminal of Santa Fe.

On or about September 17 or shortly thereafter at the Oklahoma City terminal of Lee Way.

b. Bob Pickett—On or about September 17, 1954, or shortly thereafter, at the Oklahoma City terminal of Lee Way.

c. George Wimberly—On or about September 16 at the Oklahoma City terminals of Santa Fe, Gillette, Time, Hall and Lee Way.

II.

In reply to that part of Paragraph 11 of said Motion for Bill of Particulars granted by the Trial Examiner, the picket captain who requested an employee of Santa Fe to see that Santa Fe employees did not handle American Iron freight was a picket captain present at the American Iron premises in Oklahoma City, who was supervising the pickets at said American Iron premises on or about September 18, 1954. The said picket

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captain was wearing a cap on which there was a
Machinists' emblem and his name is at this time unknown
to Counsel for General Counsel.

Respectfully submitted this 3rd day of November, 1954.

LEONARD L. PICKERING

Counsel for General Counsel

National Labor Relations Board

300 West Vickery

Fort Worth, Texas

525

(General Counsel's Exhibit 1-W)

(Received Nov. 8, 1954)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTEENTH REGION

Case No. 16-CC-47

In the Matter of

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Case No. 16-CC-48

In the Matter of

LODGE 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

**Lodge 850, International Association of Machinists, AFL,
Answer to Complaint**

Comes now Lodge 850, International Association of
Machinists, AFL,¹ and in answer to the Complaint issued

¹ Hereinafter referred to as the Respondent.

under the date of October 23, 1954, admits, denies, and alleges as follows:

1. The Respondent admits it is a labor organization within the meaning of Section 2, Subsection (5) of the Act.
2. The Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. The Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.
4. The Respondent admits, as stated in Paragraph 4 of the Complaint, that a copy of the charge in the above captioned case has been served upon its agents.
5. The Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.
6. The Respondent admits the allegations in Paragraph 6 of the Complaint so far as they allege that on or about September 15, 1954, Respondent Machinists, the collective bargaining representative of American Iron and Machine Works Company production and maintenance employees, has been engaged in a strike at the three American Iron premises as set forth in Paragraph 2, concerning terms and conditions of employment of American Iron production and maintenance employees; and in connection with said strike the Respondent Machinists have picketed at the three American Iron places of business at Oklahoma City as set forth in Paragraph 2 of the Complaint. The Respondent denies generally and specifically all other allegations contained in Paragraph 6 of the Complaint.
7. The Respondent denies generally and specifically, each and every, all and singular, the allegations in Paragraph 7 of the Complaint.

8. The Respondent denies generally and specifically each and every, all and singular, the allegations in Paragraph 8 of the Complaint.

9. The Respondent denies generally and specifically, each and every, all and singular, the allegations contained in Paragraph 9 of the Complaint.

10. The Respondent denies generally and specifically, each and every, all and singular, the allegations contained in Paragraph 10 of the Complaint.

11. The Respondent denies generally and specifically, each and every, all and singular, the allegations in Paragraph 11 of the Complaint.

12. The Respondent denies generally and specifically, each and every, all and singular, the allegations in Paragraph 12 of the Complaint.

13. The Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 13 of the Complaint.

14. The Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 14 of the Complaint.

15. The Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 15 of the Complaint.

16. The Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 16 of the Complaint.

17. The Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 17 of the Complaint.

527 18. The Respondent further denies generally and specifically, that it has in any way violated either Section 8 (b) (1) (A) and (4) (A) of the Act, or both.

19. The Respondent denies that the facts set forth in the Complaint, constitute unfair labor practices within the meaning of Section 8 (b), Subsection (1) (A) and (4) (A), and Section 2, Subsection (6) and (7) of the Act.

Respectfully submitted,

Louis P. Poulton

Louis P. Poulton, *Attorney*

For and in behalf of Lodge 850,
International Association of
Machinists, AFL

Dated at Washington, D. C.

November 5, 1954.

DISTRICT OF COLUMBIA, ss

Subscribed and sworn to before me, John A. Hamner,
Notary Public, in and for the District of Columbia, residing
therein, duly commissioned and sworn to this 5th day of
November, 1954.

JOHN A. HUMMER

John A. Hummer

*Notary Public for the
District of Columbia*

(Seal)

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

Case No. 16-CC-47

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION LOCAL NO. 886, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Case No. 16-CC-48

LODGE 550, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

and

AMERICAN IRON AND MACHINE WORKS COMPANY

Leonard L. Pickering, Esq., for the General Counsel.

Frank Grayson, Esq., Oklahoma City, Okla., for the Respondent Teamsters.

Louis P. Poulton, Esq., Washington, D. C. and Mr. Steven E. Williams, Fort Worth, Tex., for the Respondent Machinists.

Everett E. Cotter, Esq., Oklahoma City, Okla., for the Charging Party.

Before: Sidney L. Feiler, Trial Examiner.

Intermediate Report and Recommended Order**STATEMENT OF THE CASE**

Upon a charge filed by American Iron and Machine Works Company, herein referred to as American Iron, the General Counsel of the National Labor Relations Board¹ by

¹ The General Counsel and the attorney representing him at the hearing are referred to as the General Counsel. The National Labor Relations Board is referred to as the Board.

the Regional Director for the Sixteenth Region (Fort Worth; Texas), on October 23, 1954, issued a complaint against Lodge 850, International Association of Machinists, AFL, herein referred to as the Respondent Machinists, alleging that the Respondent Machinists had engaged in conduct violative of Section 8 (b) (4) (A) and (1) (A) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 65 Stat. 601, herein referred to as the Act. Copies of charge, complaint and notice of hearing were served upon the parties to the proceeding.

With respect to unfair labor practices the complaint alleges in substance that from on or about September 591 15, 1954, the Respondent Machinists, in furtherance of a dispute it had with American Iron concerning terms and conditions of employment of employees at American Iron whom it represented and, in violation of the Act, followed trucks of American Iron to loading docks of certain motor freight common carriers, picketed American Iron trucks while on premises of these common carriers, and requested their employees not to handle American Iron freight.

The Respondent Machinists in its answer dated November 5, 1954, admits certain jurisdictional allegations, but denies the commission of any unfair labor practices. Prior to the filing of its answer, the Respondent Machinists filed a motion for bill of particulars which was granted, in part, by the undersigned.

Another complaint was issued by the Regional Director on October 23, 1954, against General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 386, AFL, herein referred to as Respondent Teamsters, based upon a charge and amended charge filed by American Iron. With respect to unfair labor practices, this complaint alleges in substance that the Respondent Teamsters, while collective bargaining representative of dock employees at certain motor freight common carriers, had induced, encouraged,

and instructed, these employees not to handle American Iron freight, in violation of the Act. Copies of the charges, complaint, and notice of hearing were served upon the parties to this proceeding.

The Respondent Teamsters in its answer, dated November 1, 1954, admits virtually all the allegations of the complaint, except those of a conclusory nature and affirmatively alleges that its activities "have been directed to the sole purpose of complying with its contract governing the situation, with the employers involved herein"

Prior to the hearing both of the above cases were consolidated for the purpose of trial. Pursuant to notice a hearing was held at Oklahoma City, Oklahoma before the undersigned Trial Examiner. All parties were represented at the hearing and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

At the outset of the hearing, counsel for both Respondents moved to dismiss the complaint on the grounds that a collective bargaining contract executed by American Iron and the Respondent Machinists plus the cessation of the strike and picketing rendered the "controversy" moot. This motion was denied.

The undersigned granted motions by the General Counsel to amend the complaint issued against the Respondent Teamsters by adding two additional allegations of conduct alleged to be violative of the Act. Respondent Teamsters amended its answer to include denials of these allegations.

The General Counsel also moved to amend the complaint issued against Respondent Machinists by alleging an additional picketing incident claimed to be violative of the Act. This motion was granted. The Respondent Machinists amended its answer to include a denial of the additional allegation and also to admit certain allegations of the complaint, previously denied.

At the conclusion of the presentation of evidence by the General Counsel, the Respondent Machinists moved to dismiss portions of the complaint, as amplified in the bill of particulars, and the entire complaint itself for failure of proof. The Respondent Teamsters also moved to dismiss the complaint against it insofar as it alleges that the Respondent Teamsters by threats induced certain dock employees to refuse to handle American Iron freight and that it has encouraged employees of certain carriers to engage in strikes. Decision was reserved on these 592 motions and on their renewal at the close of the presentation of evidence. They are disposed of by the findings and recommendations herein. The General Counsel then moved to conform the pleadings to the proof as to formal matters. This motion was granted as to all pleadings without objection. Opportunity was then afforded for oral argument. However, except for a statement of position by the Respondent Teamsters, there was a waiver by all parties. Opportunity was also afforded for the filing of briefs and/or proposed findings of fact or conclusions of law or both. Briefs were received from the General Counsel, the Respondent Machinists, and the Respondent Teamsters.

Upon the entire record and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

American Iron and Machine Works Company is and has been at all times material hereto a corporation existing by virtue of the laws of the State of Delaware, having its principal office and place of business in Oklahoma City, Oklahoma. It is now and has been at all times herein mentioned engaged at its principal office and two other places of business in Oklahoma City in the manufacture of oil field equipment.

American Iron in the course and conduct of its business operations during the past 12-month period, which period is representative of all times material hereto, manufactured, sold and shipped oil field equipment valued in excess of \$1,000,000 from its Oklahoma City plants to points outside Oklahoma. The undersigned finds that at all times herein relevant American Iron was and is engaged in commerce within the meaning of the Act.

At all times material herein Gillette Motor Transport, Inc., herein called Gillette; D. C. Hall Transport, Inc., herein called Hall; Lee Way Motor Freight Lines, herein called Lee Way; Santa Fe Trails Transportation Company, herein called Santa Fe; and Time, Inc., herein called Time; were common carriers for hire engaged in the business of hauling freight by motor vehicle under license from the Interstate Commerce Commission. All of these common carriers maintain terminals, docks or loading facilities in Oklahoma City where they accept, load and unload freight. They also maintain terminals, docks and loading facilities in other States of the United States where they accept, load and unload freight, and are engaged at all such places in the business of transporting freight by motor vehicles in and between various States of the United States. These common carriers commonly transport freight for American Iron.

II. THE LABOR ORGANIZATIONS INVOLVED.

Lodge 850, International Association of Machinists, and General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, are affiliated with the American Federation of Labor and are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. THE DEFENSE OF MOOTNESS

The Respondent Machinists, in its brief, renewed its motion made at the outset of the hearing to dismiss the complaint because, it contends, the controversy has been rendered moot by the existence of a collective bargaining contract executed by it and American Iron which contract contains a no-strike clause. Also, the strike with the attendant picketing has been terminated. The Respondent Teamsters joins in this motion.

593 The undersigned finds that these developments have not rendered the present proceedings moot. Orders dealing with unfair labor practices have preventative as well as remedial purpose and effect.² The voluntary cessation of unfair labor practices or private agreements for their end do not deprive the Board of its power to add the sanction of a Board order and possibly enforcement proceedings in order to bar any recurrence of those practices.³

B. ACTIVITIES OF THE RESPONDENT MACHINISTS

1. Picketing Activities

The Respondent Machinists was and is the collective bargaining representative of production and maintenance employees at American Iron. On September 13, 1954⁴ the Respondent Machinists declared a strike against the Company. This strike lasted until October 21, 1954, when a new collective bargaining agreement was reached. The Respondent Machinists had unobstructed access to picket the three premises of American Iron during the entire period of the strike and did maintain picket lines at those premises.

² American Sheet Metal Works, 106 NLRB No. 24.

³ N.L.R.B. v. Mexia Textile Mills, Inc., 339 U.S. 563, 567; N.L.R.B. v. Spitzer Motor Sales, Inc., 211 F. 2d 235 (C.A. 2); N.L.R.B. v. F. H. McGraw & Co., 206 F. 2d 635, 641 (C. A. 6).

⁴ All dates mentioned are in 1954 unless the contrary is indicated.

Customarily all company freight shipments and deliveries were picked up and delivered at American Iron premises by agents of the freight carriers. A company truck was sent to the loading docks of these carriers only on special occasions. During the strike the situation was reversed and a company truck was used to haul shipments to the loading platforms of the carriers. The truck used, except on one occasion, was one bearing identification as an American Iron truck. The trucking was done by employees who were not represented by the Union and whose regular work did not include freight hauling.

The Union extended its picketing to include the truck operations away from American Iron premises. When a truck would leave company premises, it would customarily be followed by a car containing one or more pickets and another union representative. The truck would be driven to a loading dock. One or two machinists pickets would leave their car, don picket aprons, and picket close to the truck in a U-shape path. This picketing would be continued until the truck was driven from the premises of the carrier. Then the pickets would leave.

The picket aprons were white garments bearing the following legend:

I A of M
MACHINIST
850

(the above was in blue letters 1 3/4" high)

ON
STRIKE

(the above was in red letters 2 1/2" and 3" high)

A F of L

(blue letters 1 1/2" high)

(There is disagreement whether the following words in blue letters in script 1/2" high approximately 9" below the "AF of L" letters appeared on the bottom of the aprons)

594 : We Do Not Ask Anyone to Cease Work

This point of disagreement will be treated later in this report.

Contentions of the parties; conclusions

Section 8(b) (4) (A) provides, in part, that it shall be an unfair labor practice for a labor organization to induce or encourage the employees of any employer to engage in a strike or concerted refusal in the course of their employment to handle any goods where an object thereof is to force an employer to cease handling the products of any other manufacturer or to cease doing business with any other person. This section "proscribes picketing at the separate premises of employers who are not a party to the picketing union's primary labor dispute."⁵

There was such picketing here. The Respondent Machinists argues that its conduct was permissible primary picketing since it only picketed around the American Iron truck while it was on the premises of the carriers who were neutral parties to the dispute.⁶

However, the Board has ruled that ambulatory picketing is permissible only if the actual situs of the dispute is on the premises of a secondary employer and the primary employer has no permanent establishment where picketing can reasonably take place.⁷ Where these two factors are not present, trucks of the primary employer may not be picketed on the premises of a secondary employer even though such picketing is confined to the immediate area of a truck, the pickets carry signs clearly indicating they have a dispute only with the primary employer, and they picket only as long as the truck of the primary employer are on the prem-

⁵ Brewery and Beverage Drivers and Workers Local No. 67, etc. (Washington Coca Cola Bottling Works, Inc., 107 NLRB No. 104, p. 5).

⁶ Schultz Refrigerated Service, Inc., 97 NLRB 502; Moore Drydock Company, 92 NLRB 547.

⁷ Washington Coca Cola Bottling Works, Inc., 107 NLRB 104; Thurston Motor Lines, Inc., 110 NLRB No. 122.

ises of the secondary employer.⁸ Since the Respondent Machinists had full opportunity to picket the three places of business of American Iron in Oklahoma City and did so throughout the strike, its picketing at the premises of the freight carriers in Oklahoma City, under the above decisions, was not permissible picketing under the ambulatory situs doctrine. In view of this finding it is unnecessary to deal with the additional contentions of the General Counsel that the Respondent Machinists cannot resort to the ambulatory situs doctrine because the situs of the dispute was not on the premises of the common carriers,⁹ the picket aprons worn by the roving pickets did not identify American Iron as the employer with whom the Union had its dispute, and that these pickets on one occasion picketed an American Iron truck which had no identifying designation.

While there is considerable dispute among the witnesses whether the words, "We Do Not Ask Anyone to Cease Work," appeared on the picket aprons worn by the ~~550~~¹⁰ roving pickets,¹¹ their use would not constitute a valid defense under the circumstances of this case.

Edith C. Foster, business representative of the Respondent Machinists, testified that one of the purposes of the

⁸ Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, etc., Associated General Contractors of America, Georgia Branch, 110 NLRB No. 273.

⁹ See, Gotham Manufacturing Company, 110 NLRB No. 269.

¹⁰ Robert Pickett, a picket captain testified that the words did not appear on any of the picket aprons for the first two days of the strike, but that they were on the aprons used by the roving pickets thereafter.

¹¹ The General Counsel produced two American Iron employees who were regularly used as helpers on the American Iron truck generally used to make deliveries to the carriers during the strike, James Gray and Cleve Dodd. Dodd was not sure whether the words in question appeared on the picket aprons of the roving pickets. Gray testified that the words were not on the aprons he saw until after a court hearing on October 16. Two other witnesses were not certain about it and one, William B. Jones, testified that when he made a delivery for the Company on September 17, the words were not on the apron worn by a picket. This was on a date when, according to Pickett, the picket aprons did not have the statement on it.

picketing was to cause the employees of the carrier to refuse to get on American Iron equipment and unload shipments. As he put it at one point in his testimony:

Any place any time that we picketed the American Iron or American Iron equipment, which I feel is a part of American Iron, is an integral part of American Iron, I hope they wouldn't get in the trucks or otherwise handle or do business and do our people's work, certainly I hoped that no one would do our work while we were on strike. We were not fortunate enough, of course, to keep that from happening.

It is clear from all the circumstances of this case that the picketing was intended to do more than advertise the existence of a strike. It was intended to disrupt the business relations between American Iron and the freight carriers. The evidence establishes that these efforts were successful. The words on the bottom line of the picket apron, so small as to be hardly distinguishable if few feet away, cannot serve to blunt the purpose and effect of the picketing. Their use does not constitute a valid defense.

Finally, the Respondent Machinists contends that since the Respondent Teamsters and the secondary employers herein, the freight carriers, were parties to a uniform contract containing a "hot cargo" clause providing that members of the Union shall not be allowed to handle or haul freight to or from an unfair company provided this is not a violation of the Labor Management Relations Act of 1947," (Art. 4 (b)), an essential ingredient to a finding of a violation of Section 8 (b) (4) (A) is lacking because the handling of American Iron freight by the employees of the carriers was not "in the course of their employment." It asserts that the Respondent Teamsters' members could honor the ambulatory picket line of the Respondent Machinists without violating the Act and it therefore follows that the Respondent Machinists' conduct of notifying the members of the Respondent Teamsters that the American Iron

Company was an unfair company could not constitute encouragement or inducement of the Teamster members to engage in a concerted refusal in the course of their employment to handle the goods of another employer.

The validity of the activities of the Respondent Teamsters will be dealt with in another section of this Report. However, the undersigned is of the opinion that the conduct of the Respondent Machinists must be evaluated independently of that of the Respondent Teamsters and that the defenses, if any, available to the latter are not thereby automatically available to the former. Despite the absolute language of the "hot cargo" clause in the Teamsters uniform contract, the proof shows that after picketing of American Iron trucks began while they were on the premises of the common carriers, dock employees of at least some of those carriers continued to handle American Iron merchandise. Indeed, in some instances there were protests when supervisory employees attempted to move merchandise that would normally be moved by the dock employees, members of the Respondent Teamsters. Actually, none of the common carriers informed their employees that they

596 could not handle American Iron freight. In most instances, the dock employees continued to handle American Iron freight until instructed by representatives of their union not to do so. It has been held that a hot cargo clause may constitute a valid defense to a Section 8 (b) (4) (A) complaint, in certain instances, when the defense is raised by a labor organization which is a party to the contract.¹¹ However, in the instant case, the Respondent Machinists had no connection with the contract. Under all the above circumstances, it is found that the Teamsters contract could not constitute the basis for a defense by the Respondent Machinists. It is further con-

¹¹ Rabouin d/b/a Conway's Express, 87 NLRB 972, enf'd. 195 F.2d 906 (C. A. 2); Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135, etc., (Pittsburgh Plate Glass Company), 105 NLRB 740.

cluded that the ambulatory picketing of the American Iron trucks by the Respondent Machinists, for the reasons set forth above, was violative of Section 8 (b) (4) (A) of the Act.

2. Oral requests and threats

The complaint alleges that the Respondent Machinists orally requested employees of the freight carriers to refuse to handle American Iron freight tendered for shipment at their docks; threatened a carrier employee with loss of his Teamsters' union card if he handled American Iron freight, and requested a carrier employee to see that his fellow employees did not handle American Iron freight. The Respondent Machinists denies these allegations. The evidence of these alleged activities at the premises of the freight carriers is as follows:

Santa Fe.

James Gray, an American Iron employee who acted as helper on a company truck during the strike, testified that on September 15 or 16 he heard Edd Foster, the business representative of the Respondent Machinists, ask James Smith, freight agent of Santa Fe, whether he would accept an American Iron shipment. Smith replied that he had to and the shipment was accepted. Gray could not recall any further details about this conversation. The undersigned finds that this inquiry to a supervisory employee, even if it could have been overheard by rank-and-file employees was not in and of itself violative of the Act.

Clifford M. Troxel, a truck driver and a Teamster steward at Santa Fe, testified that he spoke with an American Iron picket captain, later identified as Robert Pickett, across the street from an American Iron plant while picketing was in progress there. During the conversation, according to Troxel, Pickett said, "Well, I hope you boys observe our picket and help us out," and not handle American Iron freight. Troxel testified that he understood Pickett's

reference to observing a picket line to refer to the one across the street, but that when Pickett raised the issue of not handling American Iron freight in general, Troxel got into a discussion with him as to whether a secondary boycott would result in such tactics.

Pickett denied that he asked Troxel not to handle American Iron freight but testified that they did discuss the roving picket tactics adopted by the Respondent Machinists and, on this point, Pickett referred Troxel to Foster for further information. He testified that there was further discussion which he could not recall, but did remember Troxel volunteering that his men would "stick" with the Machinists during the strike.

The undersigned found Troxel's version of the conversation more clear, logical and credible than Pickett's, 597 particularly since both agreed that there had been

discussion of American Iron deliveries at the Santa Fe loading docks and problems in connection with the receipt of those deliveries. The undersigned, therefore, concludes the urging of Pickett, himself a picket captain in charge of the conduct of the roving pickets and also those at the places of primary picketing, that Santa Fe employees not handle American Iron freight was an attempt to cause a refusal to handle work on the part of employees of a secondary employer, in violation of Section 8 (b) (4) (A) of the Act.

Gillette

James Hancock, a driver for American Iron during the strike, testified that on one occasion, he heard Foster tell the dock foreman of Gillette that Gillette was the only freight carrier company accepting American Iron freight. Hancock spoke up and denied that this was so. Some Gillette employees were about 10 feet away, according to Hancock. His testimony was corroborated by James Gray who was acting as helper on the American Iron truck at

that time. Foster's version was that he told the foreman that some companies were accepting the freight and some were not.

The undersigned credits Hancock's testimony but finds the evidence on the full interchange and the attendant circumstances too fragmentary to warrant a finding that under all the circumstances Foster's remark was violative of the Act.

Time

Gray testified that on September 15 or 16 while an American Iron delivery was being made at Time, he observed Foster talking to a dock hand, and heard part of the conversation in which Foster said "something about this dock hand would lose his union card or his place in the union, or something to that effect." Gray heard nothing else of the conversation and was 25 or 30 feet away from the pair. Foster denied threatening any Time employee by making the above threats. The undersigned found Gray's testimony on this point too incomplete to warrant a finding against the Respondent Machinists.

Foster testified that he did tell the dock steward at Time that he had a picket on a "hot" load of material. Hancock testified that he heard Foster thank a dock steward and then the steward refused to sign for American Iron freight. While Foster testified that his purpose in talking to the steward was to assure him that there was no strike against Time itself, the undersigned finds that this remark to the union representative of the Time dock employees was an inducement or encouragement of these employees to cease handling American Iron shipments and was violative of Section 8 (b) (4) (A) of the Act.

Hall

Gray testified that on September 15 or 16 when a Hall dock employee attempted to get on an American Iron truck to help unload, Foster who was about 10 or 15 feet

away sitting in his car called out to the man not to help unload the truck. The man backed away from the truck. On another occasion, about a week later, according to Gray, when an effort was being made to make an American Iron delivery at Hall, a dock workman asked Foster what he was doing for the good of the country. When Foster replied that he was trying to raise the wages of working-men, the man said he would help Foster.

Foster testified that he could not recall any particular conversation at Hall's. The undersigned credits Gray's testimony and finds that Foster's direction to a Hall employee not to help unload an American Iron truck was violative of the Act.

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Lee Way

William Hall, dock steward at Lee Way testified that on or about September 20 an American Iron truck was picketed on Lee Way premises by two pickets while making a delivery. After the driver had driven away, one of the pickets, Robert Pickett, went on the loading platform, and went up to Hall after several employees had pointed him out. Pickett, according to Hall, wanted to know who had signed for the freight. Hall replied that probably a management employee had signed. Pickett asked whether the Lee Way employees would recognize the Machinist picket line. Hall replied that this was a new situation, but he would try to find out the right thing to do. Pickett then remarked that the employees should not handle American Iron freight in the future.

Pickett testified that he merely asked Hall who had signed for the freight and Hall did not give him the information.

The undersigned found Hall's testimony reliable and has credited it. Pickett held a responsible position in the strike organization as a picket captain. His remarks to Hall were violative of the Act and the Respondent Machinists is chargeable with responsibility for Pickett's conduct.

4.

B. ACTIVITIES OF THE RESPONDENT TEAMSTERS

The complaint against the Respondent Teamsters consists of 29 paragraphs. Of these, the first 20 have been admitted by the Respondent Teamsters. It is undisputed that this Respondent at all times material was the collective bargaining representative of the dock employees and drivers at the 5 motor freight common carriers listed in the complaint. On the other hand, this Respondent has not, at any time material, represented employees at American Iron nor has it had a labor dispute with American Iron or any of the common carriers.

As to the activities of the Respondent Teamsters during the strike of the Respondent Machinists at American Iron, it is undisputed that at four of the carriers Santa Fe, Gillette, Hall, and Time, the Respondent Teamsters induced and encouraged the dock employees, members of its union, by appeals and instructions not to handle American Iron freight. There is only dispute as to certain details and the situation at Lee Way.

The Respondent Teamsters, while admitting most of the allegations in the complaint maintains that its activities were directed "to the sole purpose of complying with its contract governing the situation with the employers involved herein . . .," and thus was not violative of the Act. It places its reliance on the Conway case in which certain action in protection of a hot goods clause was found not violative of the Act.¹² The General Counsel maintains that the Conway case is distinguishable from the facts in the instant case.

The Respondent Teamsters at all times here relevant had an identical contract with each of the five common carriers. This contract contains the following hot cargo provision:

¹² Rabouin d/b/a Conway's Express, 87 NLRB 972, enf'd. 195 F.2d 906 (C.A. 2).

ARTICLE 4

Picket Line—

(a) The Union and the Employer agree that it shall not constitute a breach of this Agreement for any employee or Union Member covered herein to refuse to cross a picket line or to refuse to enter upon the premises of an Employer if such refusal does not constitute a violation of the Labor Management Relations Act of 1947.

599. (b) Members of the Union shall not be allowed to handle or haul freight to or from an unfair company, provided, this is not a violation of the Labor Management Relations Act of 1947.

Definition of Employees Covered—

(c) The term "employee" or "driver" or "chauffeur" shall be construed to mean the operator of a truck, tractor, motorcycle, passenger, horsedrawn vehicle, or any other vehicles used for transportation purposes and shall also include employees engaged in delivery services on foot or bicycle, or by similar methods when used to defeat the purpose of this Agreement.

In the Conway case, the Board considered the validity of the following two hot cargo clauses:

The Union reserves the right to refuse to handle goods from any firm or truck which is engaged in any controversy with this or any other Union.

The Union reserves the right to refuse to accept the freight from or to make pick-ups from or deliveries to establishments where picket lines, strikes, walkouts, and lock-outs exist.

It made the preliminary finding:

In reliance on this contractual provision, Respondent's shop stewards at each of the three establishments ceased handling Conway's freight upon being advised by the Re-

spondent's office that the Conway strike was "on". And each of the employers, apparently mindful of its contractual obligation, acquiesced in its employees' refusal to handle the "hot" cargo.

It then held:

It is evident from these facts that the three secondary employers, in effect, consented in advance to boycott Conway's. As they consented, their employees' failure to deliver freight to or accept freight from Conway trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted insubordination contemplated by the Respondent when it caused the employees to exercise their contractual privilege. In the circumstances, Section 8 (b) (4) (A) cannot apply, unless we accept the General Counsel's argument that the "hot cargo" contracts were repugnant to the policy of the amended Act and therefore invalid after the effective date of the 1947 amendments. But we find no merit in this argument. Section 8 (b) (4) (A) of the Act prohibits labor organizations from "enforcing or requiring" the participation of neutral employers in secondary boycotts by the use of certain forms of employee pressure, namely, strikes or work stoppages (either actually engaged in, or "induced" or "encouraged" by the Union). This section does not prescribe other means by which unions may induce employers to aid them in effectuating secondary boycotts; much less does it prohibit employers from refusing to deal with other persons, whether because they desire to assist a labor organization in the protection of its working standards; or for any other reason. An employer remains free, under that section of the amended Act, as always, to deal with whatever firms, union or nonunion, he chooses. And by the same token, there is nothing in the express provisions or underlying policy of Section 8 (b) (4) (A) which prohibits an employer and a union from voluntarily including "hot cargo" or "struck

work" provisions in their collective bargaining contracts, or from honoring these provisions. That is all that happened in this case. (Footnotes omitted)

The General Counsel argues that the Conway case is not determinative of the issues here because (1) In two instances in the Conway case, inducement not to handle freight was addressed to those not "employees" within the meaning of the Act, and (2) At the premises of three secondary employers stewards stopped handling Conway freight when they were told by the Union that a strike against Conway was "on," while in the present case the Teamsters did much more by way of inducement, instructions, and appeals.

Finally, the General Counsel argues that in the instant case there was no acquiescence at the time to the employees refusal to handle freight whereas there was such acquiescence in the Conway case. These points will be considered further in connection with a review of cases applying the Conway doctrine.

The Board's decision in the Conway case was affirmed on review in the Court of Appeals. The Court expressly upheld the validity of the negotiation of hot cargo clauses, stating:

The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provisions relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer *** to cease doing business with any other person." §8.(b) (4) (A).

It also upheld the validity of requests to neutral employers not to accept shipments from an employer against whom a union was striking.

The Conway doctrine was applied in the case of Local Union No. 787, International Brotherhood of Teamsters, etc., (Arkansas Express, Inc.; 92 NLRB 255, in which the Board found that there had been inducement of secondary employers not to accept freight shipments, but there had been a failure of proof of pressure on secondary employees.

In the Pittsburgh Plate Glass Company case, 105 NLRB 740, the Board specifically considered the validity of direct appeals by a Union to employees of secondary employers not to handle the goods of a primary employer when the Union and the secondary employer were parties to a contract with a hot cargo clause. In this case the Board, after reviewing the evidence, found "that during the period involved herein, the Respondent engaged in, and by its instructions and other appeals, induced and encouraged the employees of various trucking carriers [the secondary employers] to engage in a concerted refusal to handle Pittsburgh [the primary employer] freight." (p. 743) It further found that with but one belated exception the employers affirmed the contracts by acquiescing in their enforcement. It then concluded:

So, as the employers in this proceeding consented to the "unfair goods" provision of the contracts, their employees' failure to handle these goods was not a strike or concerted refusal to work under Section 8 (b) (4) (A). Nor was their employees' refusal to handle Pittsburgh freight "in the course of . . . employment" within the meaning of Section 8 (b) (4) (A) for that employment as defined by the contracts excluded from the required job duties work on "unfair goods." It cannot be said, therefore, that by causing the employees to exercise their contractual privilege, the Respondent induced a concerted refusal to work in the course of employment with an object of forcing any employer to cease doing business with any other person in violations of Section 8 (b) (4) (A). We conclude it matters not that the contracts did not

reserve to the Respondent as distinguished from the employees the right to refuse to handle "unfair goods." (page 744)

The decision in the Pittsburgh Plate Glass case was cited and followed in the case of Madden v. Local 442, International Brotherhood of Teamsters, etc., 114 F. Supp. 932, (U. S. D. C., W. D. Wis.) where an injunction was refused although the Court found that there had been inducement or encouragement of employees of secondary employers to cease handling goods of a primary employer, holding that there had been a valid exercise of the right to enforce a hot cargo clause.

In the instant case an injunction was refused on the basis that the hot cargo clause furnished a defense to a charge of violations of the secondary boycott provisions of the Act (Journal entry, Case 6428, unreported, U. S. D. C. W. D. Okla., Oct. 25, 1954).

The Board has reviewed the Conway doctrine in the case of McAllister Transfer, Inc., 110 NLRB No. 224. In the McAllister case there was an "unfair goods" clause between a union and certain freight carriers providing that it would not be a violation of the contract nor a reason for discharge for an employee to refuse to go through a picket line or refuse to handle unfair goods. An addition was later added stating that the union and its members, individually and collectively, reserved the right to refuse to handle goods of any firm engaged in a controversy with a union. It was found that there had been direct inducement by the Union involved of employees of secondary employers in aid of a labor dispute it had with McAllister. These efforts were successful even though at each of the three carriers involved a notice to employees was posted:

Our Company is not having a labor dispute with any labor union. As a common carrier holding authorities under Federal and State laws, we are required to transport all commodities properly tendered to us.

Therefore, we direct all of our employees to handle freight received by us, without discrimination as to shippers or motor carriers who may be interlining freight with us. This includes freight which we originate and is destined beyond our line in which specific routing is furnished to us by the shipper.

Two members of the Board joined in an opinion holding that secondary employers could not waive the provisions of Section 8 (b) (4) (A) since they were specifically intended to protect the public interest. They held that the Conway doctrine should be reversed and that it should be held that hot cargo clauses do not constitute a valid defense to charges of violations of Section 8 (b) (4) (A).

Two members of the Board joined in a dissenting opinion upholding the Conway doctrine as developed in later Board and Court cases.

602 A separate concurring opinion, was filed by the Chairman. He joined in the finding of a violation of the Act. However, he declared, "I do not find it necessary, or even appropriate, to overrule the Board's Conway decision, . . . nor would I go so far as to characterize the 'hot cargo' provision of the contract as being contrary to public policy." Nor, he stated would he treat the private agreement as supreme.

I doubt that public policy requires us to invalidate a hot cargo provision any more than it requires us to raise such a provision to a dignity which permits it to override other relevant facts. I will assume for the purposes of this case that the secondary employers and the union could lawfully (insofar as the Statute is concerned) contract for a hot goods provision, and they could also mutually abide by it. Moreover, I will assume that, had they done so, there would have been no showing of a violation of Section 8 (b) (4). This, I conclude, is the holding in the Conway case, and since it has court approval, I would be loathe to disturb it.

The standard the Chairman applied to the case is as follows:

I am convinced that acceptance of the Conway decision would not dispose of this case. Here, the facts which are set forth in the majority decision disclose, and the Trial Examiner found, that the Unions affirmatively induced and encouraged their members to refuse to handle McAllister freight. Since this was done in furtherance of an objective interdicted by Section 8 (b) (4), the conduct here is violative of the plain and literal language of the Section. It is impossible to say here, as in Conway, that there was no unlawful "inducement" or "refusal" on the part of the employees to handle McAllister freight. This is so for the simple reason that the secondary employees here posted notices to their employees directing them to handle all freight without discrimination. These notices were posted for the express purpose of putting employees on notice that they were expected to handle McAllister's goods when presented at the docks.

In the face of this affirmative evidence that the employees were acting contrary to explicit instructions, which was ~~not~~ true in Conway, I am unable to escape the conclusion that there was a clear "refusal" by the employees to handle McAllister freight.

Thus, we are confronted here with a case in which all of the elements of a violation—inducement, refusal, and unlawful objective—have been proved. The fact that one or more of these essential elements might have been lacking had the secondary employer adhered to the contract undertaking to boycott "hot cargo" is not enough to bring this case within the holding of the Conway decision. The General Counsel issued the complaint, and tried the case on the theory that this case was distinguishable from Conway, and I agree with his position. Accordingly, I concur in the finding that Respondents have violated Section 8 (b) (4) (A) and (B).

Since, in the McAllister case, there was a majority holding of a violation of Section 8 (b) (4) (A) only to the extent the limitations outlined in the Chairman's opinion were met, that standard will be applied in this case since the same basic circumstances exist here—the use of direct pressure on secondary employees with reliance on a hot cargo clause as a defense.

The hot cargo clauses in the McAllister and the instant case are similar. Both purport to give employees 603 the right to refuse to go through picket lines. The

McAllister clause, in addition, extends this right to a refusal to handle unfair goods. In the instant case, the language used is that union members shall not be allowed to handle freight of an unfair company.¹³ The undersigned finds that this difference is not significant in view of the emphasis in McAllister case on the actual conduct of the union engaging in the boycott and the apparent recognition of a public policy overriding the express terms of the contract.

Applying the standard of the McAllister case, as set forth above, to the instant case, the situation at each of the common carriers is as follows:

Santa Fe

The following paragraphs of the complaint are admitted:

12. Since on or about September 16, 1954, Respondent Teamsters by and through its agents, including Santa Fe Drivers' Steward, J. W. Jakeway, has induced and encouraged, despite the opposition of Santa Fe, the employees of Santa Fe to refuse to haul American Iron freight which freight had been loaded in and upon the trucks and trailers which these employees were to operate.

13. Since on or about September 21, 1954, all of the checkers, drivers, forklift operators, winch operators, dock-

¹³ See Conway's Express, 87 NLRB 972, 983, n. 33.

on and helpers of Santa Fe have refused to receive, check, haul or otherwise handle American Iron freight.

14. Upon each and every occasion named above in Paragraphs 12 and 13, Santa Fe by and through its agents, J. P. Smith and Charles W. Dean, has specifically instructed said employees mentioned above in Paragraphs 12 and 13, to receive, check, haul or otherwise handle American Iron Freight.

15. On or about September 17, 1954, Respondent Teamsters by and through its Santa Fe Dock Steward, Clifford M. Troxel, orally instructed all Santa Fe dock employees to refuse to handle freight to or from American Iron.

16. On or about September 26, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Clifford Troxel, again instructed all Santa Fe dock employees to refuse to handle American Iron freight.

Paragraph 12 refers to instances when two Santa Fe over-the-road drivers who were not members of Teamsters Local 886, but of another local, refused to handle trucks and trailers containing some American Iron shipments. Their local also was party to a contract with a hot goods clause.

Testimony also amplified the allegations of instructions to employees not to handle American Iron freight.

Clifford M. Troxel, a driver and Teamster steward at Santa Fe, testified that he told union employees at Santa Fe that he thought it unwise to handle American Iron freight in view of the hot cargo clause in their contract.

604. Noah Fentrell, a dispatcher whose duties included blocking or receiving bills, testified that on one occasion in October, a Teamster dock steward, L. C. Adams told him not to block an American Iron shipment and he did not do so.¹⁴ Fentrell, who the undersigned finds was a

¹⁴ This incident was added by amendment to the complaint.

non-supervisory employee at the time, was not in the Teamster bargaining unit, but was a member of that union. His testimony is credited. The Respondent Teamsters is responsible for the conduct of Mitchell, Jakeway, Troxel, and Adams. The stewards were implementing union policy which had been transmitted by Mitchell, their business representative.

The occurrences at Santa Fe fall within the McAllister standards and thus the conduct of the Respondent Teamsters was violative of the Act. Here, there was an unlawful objective (the breaking of business relations between Santa Fe (the secondary employer) and American Iron (the primary employer)). There was inducement by direct instructions to employees from union officials not to handle American Iron freight. There was a refusal to handle that freight. Santa Fe agents specifically instructed their employees to handle the freight, but their employees refused to do so.

Gillette

The following allegations of the complaint are admitted:

17. On or about October 6, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Robert Hawkins, Gillette Dock Steward, orally instructed Gillette dock employees to refuse to receive, check or otherwise handle American Iron freight.
18. On or about October 6, 1954, the Gillette dock employees refused to receive, check or otherwise handle American Iron freight.
19. On or about October 6, 1954, after the incident related in Paragraph 18 above, Gillette by and through their Local Freight Agent, Mr. Berrong, instructed said Gillette dock employees to go ahead and receive, check and otherwise handle American Iron freight despite their refusal, whereupon said Gillette employees did receive, check or otherwise handle American Iron freight.

Leon Berrong testified that on or about October 5 or 6 he had a discussion with Mitchell at which the Gillette dock foreman and the Teamsters steward at Gillette, Robert Hawkins, were present. Berrong wanted a statement or opinion from Mitchell as to whether he considered American Iron freight unfair once it was placed on the Gillette loading dock and whether or not the dock employees could handle it. Mitchell refused to make a definite statement, but referred Berrong and the others to Article 4 of the contract between Gillette and the Respondent Teamsters. After this conversation, Berrong received reports from his dock foreman that the dock employees refused to handle American Iron freight or to sign receipts for it.

About the time of his conversation with Mitchell, Gillette employees refused to sign for or handle American Iron freight in Berrong's presence. He asked each employee individually whether he would sign for the freight and each refused. When he asked again whether employees would handle the freight, none of them agreed to do so until one of them made a telephone call and then said the men would do so. Berrong's testimony, which has not been contradicted, is credited.

605 The three key elements of the McAllister rule exist in the incidents at Gillette. There was a definite refusal to obey Berrong's instructions to handle American Iron freight. Although this refusal was temporary, it was none the less violative of the Act.¹⁵ In any event, according to Berrong's uncontradicted testimony, the dock employees refused to handle American Iron freight after court proceedings in this case on October 16.

Time

The complaint alleges and it is admitted (except the alleged use of threats in paragraph 21):

¹⁵ Western Express Company, Inc., 91 NLRB 340, 341.

20. Since on or about September 17, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Roy McGilliard, Time Dock Steward, by appeals and oral instructions has induced and encouraged Time dock employees to refuse to receive, check or otherwise handle American Iron freight.

21. Since on or about October 5 or 6, 1954, Respondent Teamsters by and through its agents, Ralph Mitchell and Roy McGilliard, and its Time employees union members, has attempted to keep Time supervisory personnel from handling the American Iron freight by oral statements, threats, and appeals.

Thomas Armstrong, dock foreman at Time, testified that, during the strike he and an assistant dock foreman attempted to personally handle American Iron shipments in order to avoid "a lot of confusion." However, both the dock employees and Armstrong's superiors took the position that it would be a violation of the standard Teamster contract to which this carrier and the other common carriers were parties, for these supervisory employees to do the manual work they were doing. The assistant dock foreman, on instructions from the terminal manager, selected a dock employee, Bobby Brown, and directed him to load the American Iron freight. Brown refused and said, according to Armstrong, that the Teamsters steward, Roy McGilliard, had told him that he would be fined \$65 if he handled the "unfair freight."

The day after this incident, Armstrong and his assistant spoke with McGilliard. The latter quoted Mitchell as stating that none of the union employees should handle the American Iron freight. Armstrong asked McGilliard to find out whether Armstrong or his assistant could handle that freight or whether it could not be handled at all. McGilliard later reported that he had called Mitchell and had not been able to obtain a definite answer from him, although Mitchell had told McGilliard to work things out as

best he could without causing an unnecessary confusion. Armstrong and his assistant then resumed the personal handling of American Iron freight and did not ask the union members to load it. There were no further incidents.

Mitchell denied telling any one that he might be fined or saying anything to a union steward about a fine. He testified that he did not know a Bobby Brown. He further testified that a union steward is elected by union members to present their grievances to the business agent and that a steward has no authority to call a strike or make any threats.

606 The undersigned credits Armstrong's uncontra-dicted testimony as to the Brown incident and the conferences with McGilliard. Despite Mitchell's testimony about the limited power of a steward, the undersigned concludes that the Respondent Teamsters is responsible for McGilliard's conduct. Employees had been instructed by their union not to handle American Iron freight. McGilliard was the representative of the Union at the Time loading dock. His directions implementing those general instructions were within the scope of his authority. There was a violation of 8 (b)(4)(A) here.

Hall

The following paragraphs of the complaint are admitted (except for the allegation of threats in paragraph 22):

22. Since on or about September 16, 1954, Respondent Teamsters, by and through its agents, Ralph Mitchell and Bobby L. Wilkerson, Hall Dock Steward, has by oral instructions, threats and / appeals induced and encouraged Hall dock employees to refuse to receive, check or otherwise handle American Iron freight.

23. Since on or about September 16, 1954, Hall dock employees have refused to receive, check or otherwise handle American Iron freight although Hall has specifically instructed said employees to handle American Iron freight.

Claude Lowe, terminal manager for Hall, testified as to two occasions during the American Iron strike when he made special efforts to try to have American Iron merchandise handled by his dock employees. On the first occasion, he asked an employee to sign for the freight and the employee did so. However, Bobbie Wilkerson, the Teamster dock steward told Lowe the men could not handle American Iron shipments and, on that basis, Lowe told American Iron representatives that the Company could not forward its freight, although it desired to do so.

Lowe also testified that he asked the employees to handle American Iron freight, but never insisted they handle it. Lowe had a telephone conversation with Mitchell in which he reported that his dock employees had refused to handle American Iron freight, and protested that other carriers were handling this freight. Mitchell referred him to his contract with the Teamsters.

Wilkerson, corroborated Lowe's testimony that the former had told the latter that the dock employees would not handle American Iron freight. Wilkerson testified that the sequence of events bearing on their refusal was as follows: The strike had been on approximately 1 week when an American Iron shipment was offered and received at Hall on a Friday. The night checker who received the freight reported this to Wilkerson.

The following Monday or Tuesday, Wilkerson spoke with Mitchell at the Hall dock. According to Wilkerson, Mitchell asked whether the men had handled American Iron freight. When Wilkerson said there had been one instance, Mitchell showed him Section 4 (b) of the standard Teamster contract and said that such action was a violation of the contract. Wilkerson said he would relay this information to the dock employees. Mitchell also said that charges might be filed against any union member handling such freight; his dues might be refused, and his

employment might be affected under union-security provisions in the contract.

Wilkerson then told the dock employees it would be a violation of the contract to handle American Iron freight and they could lose their union book if they did so. When 607 supervisors asked that the freight be handled, he told them it would be a violation of the contract to do so and the men could not handle it. He also told this to an American Iron driver who took freight to another shipper. Mitchell later reiterated instructions not to handle American Iron freight.

Mitchell, in his testimony, agreed that he had spoken with Wilkerson. His version of the conversation is as follows:

Q. (By Mr. Grayson) Mr. Mitchell, at any time during the tenure of this strike from October 15—I beg your pardon—from September 15 until October 21, have you ever made any threats to anybody? If so, who did you make your threats to causing them to stop handling or hauling these goods? A. I have made no threats to anybody.

Q. Were you here when Wilkerson, the dock steward for Hall testified? A. I was.

Q. Do you recall that he testified something to the effect that you told him that a union member might lose their book or card, do you remember him testifying to that? A. I did remember.

Q. Well, do you remember talking to Mr. Wilkerson during the strike? A. I do.

Q. Relate, if you know, the conversation which you had with Mr. Wilkerson. A. Well, I walked up on the dock and Mr. Wilkerson asked me, "Can we handle the freight?" I said, "Mr. Wilkerson, you are in violation of the contract as I interpret it."

He said, "Well, what would happen if we do handle it?" I said, "Well, I am not sure what would happen."

He said: "Can we take the books?" I said "I can take nobody's books, that's private property of the man that has the book, and I certainly can't take it."

Q. Then if Mr. Wilkerson told anybody that they might lose their books, he didn't do it as a result of anything that you told him; is that right? A. That's right. If Mr. Wilkerson said that they may lose their books it must have been someone else that told him that, because I certainly didn't.

608 The undersigned found Wilkerson's testimony reliable and clear. His version and the testimony of Lowe are credited. Even if Mitchell did not make the statement attributed to him by Wilkerson, the Respondent Teamsters is responsible for Wilkerson's instructions to the dock employees since he was being used as the conduit for information and instructions from the Union to the dock employees on their obligations during the strike.

The undersigned finds that the Respondent Teamsters violated Section 8 (b)(4)(A) by the instructions and warnings issued to the Hall dock employees and by Wilkerson's refusal on behalf of the dock employees to handle American Iron freight even though supervisors asked that it be done. While management did not take any action to enforce its request, its wishes were made known and Wilkerson's refusal was definite and unambiguous.

Lee Way

It is alleged in the complaint, as amended, that dock employees at Lee Way refused to handle a picketed American Iron shipment. This allegation was denied. No evidence was introduced to establish that the refusal at Lee Way was in violation of definite instructions given to the employees. Accordingly, the undersigned finds that there

has been a failure of proof of a violation of Section 8 (b) (4) (A) at Lee Way by the Respondent Teamsters.

C. THE ALLEGED 8 (b) (1) (A) VIOLATION

The complaints allege that the Respondent Teamsters and the Respondent Machinists, by their inducement and encouragement of employees of the common carriers to engage in concerted refusals to handle freight, as set forth above, have restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and have thereby violated Section 8 (b) (1) (A) of the Act. These activities have been found to be violative of Section 8 (b) (4) (A) of the Act.

The Board has held that violations of Section 8 (b) (4) (A) are not ipso facto violations of Section 8 (b) (1) (A).¹⁶ The activities engaged in by the Respondents were not in themselves independent violations of 8 (b) (1) (A). There was picketing by the Respondent Machinists and some non-coercive requests not to handle American Iron freight. The instructions and directions issued by the Respondent Teamsters were also noncoercive. However, there were some threats of union disciplinary action if the instructions were violated. This was within the purview of the proviso to Section 8 (b) (1) (A) and was not violative of the Act.¹⁷ The undersigned concludes that the activities of the Respondents were not violative of Section 8 (b) (1) (A) of the Act.

¹⁶ Printing Specialties and Paper Converters Union, 82 NLRB 271, 273; Local 74, United Brotherhood of Carpenters and Joiners, etc., (Watson's Specialty Store), 80 NLRB 533, 539, 549; International Brotherhood of Teamsters, etc., Local 87 (Di Giorgio Wine Company), 87 NLRB 720, 723, 750.

¹⁷ International Typographical Union, 86 NLRB 951, 955-57; Minneapolis Star and Tribune Company, 109 NLRB No. 109.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Charging Party and the named motor freight common carriers, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and such of them as have been found to be unfair labor practices tend to burden and obstruct commerce and the free flow of commerce.

609

V. THE REMEDY

Having found that the Respondents have violated Section 8.(b) (4) (A) of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative action which it is found necessary to effectuate the policies of the Act.

Conclusions of Law

1. Lodge No. 850, International Association of Machinists; AFL, and General Drivers, Chauffeurs, Warehousemen and Helpers Union Local No. 886, AFL, are labor organizations within the meaning of Section 2 (5) of the Act.
2. The Respondents, by inducing and encouraging employees of Gillette Motor Transport, Inc.; D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, and Time, Inc., and the Respondent Machinists by inducing and encouraging employees of Lee Way Motor Freight Lines, to engage in a strike or concerted refusal in the course of their employment to handle freight transported by American Iron and Machine Works Company, where an object thereof was to force or require their employers to cease doing business with American Iron and Machine Works Company have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

4. It has not been established that the Respondent Teamsters violated Section 8 (b) (4) (A) of the Act by any activities at Lee Way Motor Freight Lines nor has it been established that the Respondents violated Section 8 (b) (1) (A) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law it is recommended that the Respondents shall:

1. Cease and desist from inducing and encouraging the employees of any employer other than American Iron and Machine Works Company to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where an object thereof is to force and require an employer or person to cease doing business with American Iron and Machine Works Company.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at their respective business offices in Oklahoma City, Oklahoma, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, after being duly signed by official representatives of the Respondents, shall be posted by the Respondents immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any

other material. The Respondents shall also sign copies of the notice which the Regional Director shall submit for posting at the Oklahoma City premises of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, and Time, Inc., said employers being willing. The Respondent Machinists shall also sign a copy of the notice for posting at Lee Way Motor Freight Lines;

610 (b) Notify the Regional Director for the Sixteenth Region in writing within twenty (20) days from the date of service of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith:

It is also recommended that unless the Respondents shall, within twenty (20) days from the date of service of an order transferring this case to the Board, notify the Regional Director, in writing, that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondents to take the action aforesaid.

It is further recommended that the complaint be dismissed insofar as it alleges that the Respondent Teamsters violated Section 8 (b) (4) (A) by activities at Lee Way Motor Freight Lines and that the Respondents violated Section 8 (b) (1) (A) of the Act.

Dated at Washington, D. C., this 18th day of March 1955.

SIDNEY L. FEILER
Sidney L. Feiler
Trial Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board; and in order to effectuate the policies of the Labor Management Relations Act, we hereby give notice that:

We will not induce and encourage the employees of any employer, other than American Iron and Machine Works Company to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where an object thereof is to force or require any employer or person to cease doing business with American Iron and Machine Works Company.

LODGE 850, INTERNATIONAL ASSOCIA-

TION OF MACHINISTS, AFL

(Labor Organization)

Dated

By

(Representative) (Title)

GENERAL DRIVERS, CHAUFFEURS,

WAREHOUSEMEN AND HELPERS

UNION, LOCAL 886, AFL

(Labor Organization)

Dated

By

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 16-CC-47

Case No. 16-CC-48

Decision and Order

On March 18, 1955 Trial Examiner Sidney L. Feiler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondents had not engaged in certain other alleged unfair labor practices and recommended that the complaint be dismissed as to them. Thereafter, the Respondents filed exceptions to the Intermediate Report with supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

1. We find, as did the Trial Examiner, that Respondent Teamsters by its inducement of employees of the common carriers (secondary employers) to engage in a concerted refusal in the course of their employment to handle freight brought by American Iron (the primary employer) to the carriers' docks, with an object of forcing or requiring the carriers to cease doing busi-

¹ The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the affiliation of the unions accordingly.

ness with American Iron violated Section 8 (b) (4) (A) of the Act.

Like the Trial Examiner, we reject the contention of Teamsters that its conduct was excused by the "hot cargo" clause in the Teamsters' contracts with the common carriers. This clause provided that members of Teamsters "shall not be allowed to handle or haul freight to or from an unfair company." However, in rejecting this defense, we do not rely, as did the Trial Examiner, on the McAllister case,² but rather on more recent Board decision in the Sand Door case,³ which was decided after the issuance of the Intermediate Report in the case at bar. As stated in the principal opinion in that case, regardless of the existence of a "hot cargo" clause, any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. Thus, while Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle "hot" goods. Accordingly, in affirming the Trial Examiner, we do not find it necessary to rely as he did, on the fact that the secondary employers herein did not acquiesce in the refusal of their employees to handle American Iron's freight. In our view, it is sufficient that there was direct inducement of such employees by Teamsters not to handle such freight, with an object of forcing the secondary employers to cease dealing with American Iron.

² *McAllister Transfer, Inc.*, 110 NLRB 1769.

³ *Sand Door and Plywood Co.*, 113 NLRB No. 123. Members Murdock and Peterson dissented.

2. Like the Trial Examiner, we find also that Respondent Machinists violated Section 8 (b) (4) (A) of the Act (a) by picketing American Iron trucks at the docks of the neutral common carriers while the trucks were attempting to deliver American Iron freight to the carriers,⁴ and (b) the oral appeals of Machinists' agents to the employees of the carriers not to handle American Iron freight at the carrier's docks; all with the object of forcing the carriers to cease dealing with American Iron.⁵

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Board, as amended, the National Labor Relations Board hereby orders that the Respondents, General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO and Local 850, International Association of Machinists, AFL-CIO, and their officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from inducing or encouraging the employees of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, Time, Inc. and Lee Way Motor Freight Lines, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron and Machine Works Company, or any other employer, where an object thereof is to force or to require any employer or person to cease doing business with American Iron and Machine Works Company.

⁴ We find that this picketing was unlawful, not only because of the availability of the primary employer's premises for that purpose, but also because the pickets failed to disclose that their dispute was only with the primary employer. See Moore Dry Dock Company, 92 NLRB 547.

⁵ As we have found that the hot cargo clause in the Teamsters' contracts with the carriers is not available as a defense to the Teamsters, it necessarily follows that such clause is likewise not available to the Machinists.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at their respective business offices in Oklahoma City, Oklahoma, copies of the notice attached 635 to the Intermediate Report as Appendix A.⁶ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, after being duly signed by official representative of the Respondents, shall be posted by the Respondents immediately upon receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Respondents are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material. The Respondents shall also sign copies of the notice, which the Regional Director shall submit for posting at the Oklahoma City premises of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Sante Fe Trails Transportation Company, and Time, Inc. said employers being willing. The Respondent Machinists shall also sign a copy of the notice for posting at Lee Way Motor Freight Lines;

(b) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the Respondents have taken to comply herewith.

It is further Ordered that the complaint be dismissed insofar as it alleges that the Respondent Teamsters violated Section 8 (b) (4) (A) of the Act by activities at Lee Way

⁶ This notice shall be amended by substituting for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER," in the caption thereof, the words "A DECISION AND ORDER." In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

Motor Freight Lines, and that the Respondents violated Section 8 (b) (1) (A) of the Act.

Dated, at Washington, D. C. March 15, 1956.

BOYD LEEDOM

Boyd Leedom, *Chairman*

PHILIP RAY RODGERS

Philip Ray Rodgers, *Member*

STEPHEN S. BEAN

Stephen S. Bean, *Member*

NATIONAL LABOR RELATIONS BOARD

(SEAL)

636 PHILIP RAY RODGERS, MEMBER, concurring:

I concur in the result reached by Chairman Leedom and Member Bean only because I am convinced that "hot cargo" clauses are contrary to public policy and cannot, therefore, serve as a defense to a complaint charging a violation of Section 8 (b) (4) (A) of the Act, I have stated before, and now reiterate, that Section 8 (b) (4) (A) was specifically intended by Congress to safeguard the public interest, i.e., "in order adequately to protect the public welfare which is inextricably involved in labor disputes." A "hot cargo" provision, as I see it, is a device to immunize in advance the very conduct which Congress, in response to a dire public need, sought effectively to eliminate. I therefore feel that we cannot, in the light of our mandate from Congress, permit this device to preclude what would otherwise require the finding of an unfair labor practice under the statute.

Dated, Washington, D. C. March 15, 1956.

PHILIP RAY RODGERS

Philip Ray Rodgers, *Member*

NATIONAL LABOR RELATIONS BOARD

ABE MURDOCK and IVAR H. PETERSON, MEMBERS, *dissenting*:

In this case a majority of the present Board completes a reversal of a principle of Board law⁷ that has been affirmed in each United States circuit⁸ and district court⁹ in which the issue has been raised. Indeed, as the Trial Examiner found, the General Counsel's request for a preliminary injunction pending the Board's decision in this very case was refused by the United States District Court for the Western District of Oklahoma on the ground that the neutral employers involved had granted their employees permission by contract to refuse to handle freight from the American Iron and Machine Works Company, an employer engaged in a labor dispute with the

637 Respondent Machinists. The majority, however,

ignoring and disregarding the decision of these courts, finds that the Respondents Teamsters and Machinists have violated Section 8 (b) (4) (A) despite the fact that the conduct of these Unions did not extend beyond inducement of employees not to handle freight from an unfair company, work which their employers and the Teamsters had agreed by a lawful¹⁰ contract that employees would not be "allowed" to perform. We do not believe that the logic and force of considered judicial decisions which reaffirm the correctness of the Board's initial interpretation of the Act in Conway's Express should be so cavalierly ignored.

The McAllister case¹¹ was the first to intrude upon the

⁷ Conway's Express, 87 NLRB 972; Pittsburgh Plate Glass Company, 105 NLRB 740.

⁸ Lebouin d/b/a Conway's Express, 195 F. 2d 906 (C.A. 2).

⁹ Madden v. Local 442, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, 114 F. Supp. 932 (D.C. Wis.); N.L.R.B. v. Lodge 850, AFL's Machinists and Local 886, AFL's Teamsters, U.S. D.C. E.D. Okla., October 16, 1954.

¹⁰ The majority decision finds that "Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause."

¹¹ McAllister Transfer, Inc., 110 NLRB 1769.

theretofore well-established Conway's Express doctrine. In the latter case the Board, affirmed by the Court of Appeals for the Second Circuit, held that an employer could lawfully agree in advance that its employees would not be required to handle freight from any employer involved in a labor dispute and that the invocation of such a contractual clause by a Union was not proscribed by Section 8-(b) (4) (A). The Board said:

It is evident from these facts that the three secondary employers, in effect, consented in advance to boycott Conway's. As they consented, their employees' failure to deliver freight to or accept freight from Conway trucks was not in the literal sense a "strike" or "refusal" to work, nor was any such concerted insubordination contemplated by the Respondent when it caused the employees to exercise their contractual privilege.

Expressly upholding the validity of the union's conduct in that case, the Court of Appeals held:

The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's "forcing or requiring any employer . . . to cease doing business with any other person."

In McAllister, Chairman Farmer, whose vote was necessary to the majority decision, stated that he was 638 "loathe to disturb" the Company's principle since it had court approval. However, he distinguished the two cases on the ground that in McAllister, unlike Conway's the secondary employers had posted notices specifically directing their employees to handle hot cargo notwithstanding their contractual agreement to the contrary. This distinction, the validity of which we ques-

tioned in our dissenting opinion in McAllister, was apparently abandoned by the Board majority in the Sand Door and Plywood case¹² where Chairman Farmer and Member Leedom held, on the one hand, that employers could "agree in advance" to boycott another employer by executing a hot cargo clause but, on the other hand, that such an agreement was not defense to an appeal by the union to employees not to handle goods subject to the agreement. We can only read this decision as meaning that an agreement is not an agreement whenever the actual facts contemplated by the agreement arise. If this logic prevails in the field of labor relations, then parties to collective bargaining agreements can never provide for the peaceful settlement of future disputes nor can either rely upon the solemnly pledged word of the other in a lawful existing contract.

The rationale of the Sand Door and Plywood case is, according to the majority, the sole basis for its decision in the instant case. The majority finds that Section 8 (b) (4) (A) "does not forbid the execution of a hot cargo clause or a union's enforcement thereof by appeals to the employer to honor his contract." Notwithstanding this finding, the majority then concludes that a union may not seek enforcement of the clause by appeals to employees "whether or not the employer acquiesces in the union's demand that the employees refuse to handle the 'hot goods.' The inconsistency of these findings is so apparent that they must, in our opinion, fall of their own weight. What good is a contract that deprives one of the parties of a benefit derived through collective bargaining unless the other party unilaterally decides to "honor his contract" rather than to breach it? Indeed, the language of this decision is so broad that even if an employer reaffirms his adherence to an existing contract the union may not, under penalty of violating Section 8 (b) (4) (A),

¹² San Door and Plywood Co., 113 NLRB No. 123.

639. notify its members that the contract applies. From the majority's decision it would seem that officials of the Teamsters may not so much as discuss a hot cargo clause at a membership meeting for this may be construed by the majority as an inducement of employees to engage in a strike for an object proscribed by Section 8 (b) (4) (A). Carried further, the majority's decision may also be taken to mean that the union cannot send copies of a contract containing a hot cargo clause, to its members on whose behalf the contract was signed for this conduct may similarly be construed as an inducement of employees to read and therefore rely upon their contractual rights. Such a result, in our opinion, reduces the majority's position to an absurdity.

For these reasons and for the reasons expressed in our dissenting opinions in McAllister and Sand Door and Plywood so far as they are applicable here, we would dismiss this complaint in its entirety both with regard to the Teamsters and the Machinists. Although the latter union was not a party to the contract, this circumstance is irrelevant in determining whether employees have been induced, by the Machinists to engage in a strike or concerted to work within the meaning of Section 8 (b) (4) (A). If the failure of employees to handle hot goods is not considered a strike or concerted refusal in the course of their employment to handle the goods of another employer because it is excluded from the scope of their employment by contract, it would seem to follow that the inducement of them not to handle such goods, whether or not such inducement is by the union which is a party to the "hot cargo" agreement, is not violative of Section 8 (b) (4) (A). In other words, as the parties to the contract have by contract excluded the handling of "hot goods" from the required duties of the employees covered by the contract, the inducement of the employees by a union not a party to the contract not to do something that they are not required to do and which indeed is outside the scope of their

employment would appear to be no more a violation of the Act than would such inducement by their own union. As a matter of fact in this case it seems clear that the parties to the contract intended to exclude the handling of hot cargo from the employees' scope of employment for the "hot cargo" clause provides that,

"Members of the Union shall not be *allowed* to handle or haul freight to or from an unfair company, . . . (Emphasis supplied.)"

640. This language may be construed as constituting the refusal to handle hot cargo as of a duty than a privilege. That is, it expressly prohibits such activity and therefore may be considered as imposing a duty upon the employees not to handle hot cargo. How can it be held that another union that requested the employees covered by such a contract not to do that which they are prohibited by contract from doing, thereby has violated the law?

Dated, Washington, D. C., March 15, 1956.

ABE MURDOCK, *Member*
IVAR H. PETERSON, *Member*
NATIONAL LABOR RELATIONS BOARD

(Received May 2, 1955)

624 **Machinists' Exceptions to Intermediate Report and Recommended Order**

Respondent Lodge 850, International Association of Machinists, AFL, generally except to the Trial Examiner's Intermediate Report and Recommended Order filed with the National Labor Relations Board at Washington, District of Columbia, and specifically and generally object to the adoption thereof by the Board. The Respondent specifically excepts to the following findings and conclusions of the Trial Examiner:

I.

1. To the finding that the existence of a collective bargaining agreement which contained a no-strike clause and

the termination of the strike and picketing did not render the proceedings moot. (IR, P. 4, L. 1-7)

2. To the conclusion that the picketing was in violation of Section 8(b)(4)(A). (IR, P. 8, L. 16)

3. To the conclusion that the Respondent Machinists' picketing at the premises of the freight carriers in Oklahoma City was not permissible under the ambulatory situs doctrine. (IR, P. 5, L. 30-34)

625 4. To the conclusion that the words "We Do Not Ask Anyone To Cease Work" on the picket aprons would not constitute a valid defense under the circumstances of this case. (IR, P. 5, L. 43-45; P. 6, L. 1)

5. To the conclusion that the picketing was intended to do more than advertise the existence of a strike and that it was intended to disrupt the business relations between American Iron and the freight carriers. (IR, P. 6, L. 16-20)

6. To the conclusion that the words on the bottom of the picket apron were so small they could not be distinguished a few away and did not serve to blunt the purpose and effect of the picketing and that their use did not constitute a valid defense. (IR, P. 6, L. 20-23)

7. To the conclusion that the conduct of the Respondent Machinists must be evaluated independently of that of the Respondent Teamsters and that the defenses, if any, available to the latter are not thereby automatically available to the former. (IR, P. 6, L. 42-47)

8. To the findings that despite the language of the "hot cargo" clause in the Teamsters contract, the proof shows dock employees continued to handle the goods of American Iron. (IR, P. 6, L. 47-54)

9. To the finding that the dock employees continued to handle American Iron freight until instructed by the representatives of the Union not to do so. (IR, P. 7, L. 1-3)

10. To the conclusion that under the circumstances of this case the Teamsters contract could not constitute the basis for a defense which could be asserted by the Respondent Machinists. (IR, P. 7, L. 7-9)

11. To the conclusion that the Respondent Machinists violated Section 8(b)(4)(A) of the Act by the ambulatory picketing of the American Iron trucks. (IR, P. 7, L. 9-12)

12. To the finding that Pickett raised the issue of not handling American Iron freight in general and that Troxel got into a discussion with him as to whether secondary boycott would result from those tactics. (IR, P. 7, L. 42-47)

626. 13. To the finding that the Troxel's version of the conversation was more clear, logical and credible than Pickett's, particularly since both agreed that there had been a discussion of American Iron deliveries at the Santa Fe loading docks and problems in connection with the receipt of those deliveries. (IR, P. 7, L. 57-58; P. 8, L. 1-3)

14. To the conclusion that the urging of Pickett that Santa Fe employees not handle American Iron freight was an attempt to cause a refusal to handle work on the part of employees of a secondary employer, in violation of Section 8(b)(4)(A) of the Act. (IR, P. 8, L. 3-8)

15. To the finding that Gray testified that he heard Foster say "Something about this dock hand would lose his union card or his place in the union, or something to that effect." (IR, P. 8, L. 28-32)

16. To the finding that Foster told a dock hand at Time that he had a picket on a "hot" load of material and that Hancock testified that he heard Foster thank a dock steward and then the steward refused to sign for American Iron freight. (IR, P. 8, L. 37-45)

17. To the conclusion that the remarks made by Foster to the union representative of the Time dock employees

was an inducement or encouragement of these employees to cease handling American Iron shipments and was violative of Section 8(b)(4)(A) of the Act. (IR, P. 8, L. 45)

18. To the finding that Gray testified on September 15 or 16 when a Hall dock employee attempted to get on an American Iron truck to help unload, Foster who was about 10 or 15 feet away sitting in his car called out to the man not to help unload the truck, and that the man backed away from the truck. (IR, P. 8, L. 49-52)

19. To the finding that Gray's testimony was correct and that Foster's direction to a Hall employee not to help unload the American Iron truck was violative of the Act. (IR, P. 8, L. 60-62)

627 20. To the finding that Pickett asked whether the Leeway employees would recognize the Machinist picket line and to the finding that Hall replied that this was a new situation, but that he would try to find out the right thing to do, and further to the finding that Pickett then remarked that the employees should not handle American Iron freight in the future. (IR, P. 9, L. 9-13)

21. To the finding that Hall's testimony was reliable and the crediting of it. (IR, P. 9, L. 18-19)

22. To the conclusion that Pickett's remarks to Hall were violative of the Act and that the Respondent is responsible for Pickett's conduct. (IR, P. 9, L. 20-22)

23. To the conclusion that the same basic circumstances exist in the present case as existed in the McAllister case. (IR, P. 13, L. 58-61)

24. To the finding that occurrences at Santa Fe fell within the McAllister standards and thus the conduct of the Respondent Teamsters was violative of the Act. (IR, P. 15, L. 11-12).

25. To the finding that there was an unlawful objective (the breaking of business relations between Santa Fe (the

secondary employer) and American Iron (the primary employer). (IR, P. 15, L. 13-15)

26. To the finding that Santa Fe agents specifically instructed their employees to handle the freight. (IR, P. 15, L. 16-18)

27. To the finding that three key elements of the McAlister rule exist within the incidents at Gillette. (IR, P. 16, L. 1-2)

28. To the conclusion that there was a definite refusal to obey Berrong's instructions to handle American Iron freight. (IR, P. 16, L. 2-3)

29. To the finding that the refusal to handle the freight was temporary none the less it was violative of the Act. (IR, P. 16, L. 3)

30. To the finding that a dock foreman at Time on instructions from the terminal manager selected a dock employee, Bobby Brown, and directed him to load the American Iron freight. (IR, P. 16, L. 33-35)

628 31. To the finding that Brown's refusal to handle the freight according to Armstrong and that the Teamsters Steward, Roy McGilliard, had told him that he would be fined \$65.00 if he handled the "unfair freight". (IR, P. 16, L. 36-38)

32. To the finding that Armstrong's testimony as to the Brown incident and the conference with McGilliard should be credited. (IR, P. 17, L. 1-2)

33. To the conclusion that the Respondent Teamsters are responsible for McGilliard's conduct. (IR, P. 17, L. 2-5)

34. To the finding that McGilliard was a representative of the Union at Time loading dock and his directions implemented those instructions were within the scope of his authority. (IR, P. 17, L. 6-8)

35. To the finding that there was a violation of Section 8(d)(4)(A) as to Time incidents. (IR, P. 17, L. 8-9)

36. To the finding that the Respondent Teamsters is responsible for Wilkerson's instructions to the dock employees since he was being used as a conduit for information and instructions from the Union on their obligations during the strike. (IR, P. 19, L. 3-7)
37. To the conclusion that the Teamsters violated Section 8(b)(4)(A) of the Act by the instructions and warnings issued to the Hall dock employees and by Wilkerson's refusal on behalf of the dock employees to handle American Iron freight, even though the supervisor asked that it be done. (IR, P. 19, L. 9-13)
38. To the finding that while management did not take any action to enforce its request, its wishes were made known and Wilkerson's refusal was definite and unambiguous. (IR, P. 19, L. 13-14)
39. To the conclusion that the activities of the Respondents set forth in Section III, of the Intermediate Report, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states and such of them as have been found to be unfair labor practices tend to burden and obstruct commerce and the free flow of commerce. (IR, P. 19, L. 51-56)
40. To the finding and conclusion that the Respondents violated Section 8(b)(4)(A) of the Act. (IR, P. 20, L. 3-4)
- 629 41. To the recommendation that the Respondents cease and desist therefrom and take certain affirmative action which is found necessary to effectuate the policies of the Act. (IR, P. 20, L. 4-6)
42. To the conclusion of law that the Respondents induced and encouraged the employees of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, and Time, Inc. and the Respondent Machinists induced and encouraged the employees of Leeway Motor Freight Lines to engage in a strike or concerted refusal in the course of their employment to handle

freight transportation by American Iron and Machine Works Company, where an object thereof was to force or require their employees to cease doing business with American Iron and Machine Works Company, and have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act. (IR, P. 20, L. 14-23)

43. To the conclusion of law that there are unfair labor practices which effect commerce within the meaning of Section 2(6) and (7) of the Act. (IR, P. 20, L. 25-26)

44. To the recommendations that the Respondents cease and desist from inducing and encouraging employees of any employer other than American Iron and Machine Works Company, to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where the object thereof is to force and require an employer or person to cease doing business with American Iron and Machine Works Company. (IR, P. 20, L. 38-43)

45. To the recommendations that the Respondents take action to correct the unfair labor practices. (IR, P. 20, L. 45-62) and (IR, P. 21; L. 1-15)

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II.

The Respondent takes exception to the Trial Examiner's failure to find and conclude:

1. That the controversy had been rendered moot by the existence of a collective bargaining agreement executed by it and the American Iron and Machine Works Company, which contract contained a no-strike clause and still further by the cessation of the strike and the picketing due to the signing of the collective bargaining agreement.

2. That the picketing by the Respondent Machinists was ambulatory picketing within the rule of the Moore Drydock Company and the Schultz Refrigerated Service, Inc. cases.

- 3. That since the Respondent Teamsters' contract contained a "hot" cargo clause, the Respondent Teamster could honor the ambulatory picket line of the Respondent Machinists without violating the Act and therefore the Respondent Machinists' conduct of notifying the members of the Respondent Teamsters that the American Iron Company was an unfair company could not constitute encouragement or inducement of the Teamsters' members to engage in a concerted refusal in the course of their employment to handle the goods of another employer.
- 4. That the McAllister case is not applicable under the facts and circumstances of the present case.
- 5. That the Respondent Machinists made no oral request or threats to any of the common carriers on or off their respective premises.
- 6. That the activities of the Respondent Teamsters was protected under the "hot cargo" clause as decided in Conway Express and the Pittsburgh Plate Glass Company case.

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III.

The Respondent takes exception to the Trial Examiner's failure to grant the Respondents motions to dismiss the Complaint in its entirety on grounds of mootness as well as the failure of the General Counsel to sustain the burden of proof with respect to the unfair labor practices involved and, accordingly, renews its motions in these respects.

Respectfully submitted,

Louis P. Poulton

Louis P. Poulton, Attorney For
and in Behalf of Lodge 850
International Association of
Machinists

Dated this 20th day of April 1955
at Washington, D. C.

(Received May 2, 1955)

623 Teamsters' Exceptions to Intermediate Report and Recommended Order

Respondent General Drivers, Chauffeurs, Warehousemen and Helpers Union Local No. 886, AFL, generally except to the Trial Examiner's Intermediate Report and Recommended Order filed with the National Labor Relations Board at Washington, District of Columbia, and specifically and generally object to the adoption thereof by the Board. The Respondent specifically excepts to the following findings and conclusions of the Trial Examiner:

1. That the Facts and Circumstances in the instant case are not distinguishable from the "Conway" case and that the same ruling should be followed.
2. That acquiescence on the part of the Secondary employers is not required for their employees to refuse to handle unfair freight when both the employers and employees are bound by the obligations of contract to not allow said unfair freight to be handled.
3. That Teamsters Union, Local 886 respects their Contracts and that they are bound to abide by them and any reasonable means employed by the Union to carry out said contractual obligations are not a violation of the NLRB so long as the contract is legal.

(Received March 26, 1956)

643 Motion for Reconsideration of Respondent, Lodge 850, International Association of Machinists, AFL-CIO

On March 18, 1956, the National Labor Relations Board issued a Decision and Order in the above-captioned case.¹ Lodge 850, International Association of Machinists, AFL-CIO, one of the Respondents in this case, respectfully moves the Board to reconsider its Decision and Order for the following reasons:

¹ 115 NLRB No. 121.

THE BOARD DID NOT PASS ON THE RESPONDENT'S CONTENTION THAT THE CONTROVERSY INVOLVED IN THIS CASE IS NOW MOOT AND WAS MOOT PRIOR TO THE ISSUANCE OF THE COMPLAINT

The Trial Examiner, in his Intermediate Report, found that the defense of mootness was not available to the Respondents in this case.² The Respondent excepted to this finding in its Exceptions to the Intermediate Report and Recommended Order.³ The Board did not rule on 644 the Respondent's Exception to the Trial Examiner's finding on the mootness issue, therefore, we respectfully request the Board to reconsider its decision in light of the mootness of the controversy.

ARGUMENT

THE CONTROVERSY IS NOW RENDERED MOOT BY COMPLETE SETTLEMENT OF TERMS AND CONDITIONS OF EMPLOYMENT EMBODIED IN A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES WITHOUT THE COMPELLECION THAT ARISES FROM AN INJUNCTION

At the hearing, the Respondent moved to dismiss the Complaint in its entirety on the grounds that the controversy was moot by the signing of a collective bargaining agreement. The Trial Examiner, in his Intermediate Report, denied the Respondent's Motion. The Respondent renewed its Motion and again raised the issue of mootness in its Exceptions and Brief. The Trial Examiner, in his findings, admitted that on October 21, 1954, the American Iron Machine Works Company and Lodge 850, International Association of Machinists, AFL-CIO, signed a collective bargaining agreement.⁴ This agreement resolved all differences between the parties concerning the terms and

² Intermediate Report, page 4, lines 1 to 7.

³ See Respondent Machinists' Exceptions to Intermediate Report and Recommended Order, pg. 1, par. 1.

⁴ Respondent Machinists Exhibit No. 2.

conditions of the employment of the employees represented by the Respondent at the American Iron Machine Works Company.

At the time the Complaint was issued, there was no longer any picketing at American Iron's premises nor was there any picketing of American Iron's trucks. The contract contained a "no strike" clause prohibiting the Respondent from striking for a period of one year from the date of the contract.⁵ After the signing of the contract by the parties, all disputes between American Iron and the Respondent were resolved and the strike and picketing was completely ended. There is no evidence in the record that since that time, the Respondent intended to picket the Employer's premises in violation of the no strike provision or that it did. Indeed, now more than one year has passed since this matter at bar has been litigated and there is no evidence which would support the requirement of posting a notice.

The dispute was resolved and therefore the Complaint presented a moot controversy. In Local 74, United Brotherhood of Carpenters and Joiners, AFL, et al., vs. NLRB, 341 U.S. 707, 715, involving a secondary boycott 645 under Section 8(b)(4)(A), the Court stated:

"This case has not been rendered moot by the completion of the renovation project. The Complaint was against Petitioner's use of secondary pressure upon Watson's in a manner proscribed by the Statute. The use of such pressure on this renovation project was merely a sample of what might be repeated elsewhere if not prohibited. *The underlying dispute between the Petitioner and Watsons has not been shown to have been resolved.*" (Emphasis added)

In our view, it appears that had the dispute in question been resolved, the Court would have considered the ques-

⁵ Respondent Machinists Exhibit No. 2, p. 23 of Article 26.

tion as being moot and would have denied enforcement of the Board's order.

In Benz vs. Compania Naviera Hidalgo, 32 LRRM, 2362 (CA 9), the Court of Appeals held in analogous factual situation to the one here, and where an interlocutory injunction had issued, that the appeal of the interlocutory injunction had become moot and the Court had no right of action to pass upon the merit of the appeal. As the Court said:

"... but the Court is not empowered to decide moot questions or abstract propositions or to declare for the Government of future cases, principles, or rules of law which cannot affect the results as to the thing before it."

This rule precisely states the position of the Respondent.

It is true that in *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Local 911*, (107 NLRB No. 144), the Board said:

"The Board and the Courts have repeatedly held that the *secession* of unfair labor practices does not render a case moot." (Emphasis ours)

However, the Respondent in that case had ceased the unfair labor practices only after the Board had, under Section 10(1) of the Act, applied to the Federal District Court for an injunction, and the Court had issued a notice to show cause why a temporary order should not issue restraining violations of Section 8(b)(4)(A) of the Act. Moreover, the Board further contended that it was necessary to effectuate the purposes of the Act to prevent the recurrence of the Respondent's unlawful activity relying upon International Typographic Union, 86 NLRB No. 951, 961, where it said:

646 "... even if the post-injunction conduct be found legal, it could in no event render moot any unfair labor practices permitted prior thereto, because, apart

from other considerations, conduct engaged in under an injunction is necessarily ambiguous, it being impossible to determine whether such conduct is voluntary or springs from the compulsion of the injunction."

These cases are clearly distinguishable from the case at bar because here the Federal District Court for the Western District of Oklahoma in Civil Case No. 6428, denied the Board's request for a 10(1) injunction because before issuance of the Complaint, American Iron and Local 850, International Association of Machinists, AFL, had voluntarily entered into a complete and binding collective bargaining agreement which prohibited Respondent from striking for a period of one year. The Court found that there was neither ambiguity nor compulsion to enter into such an agreement, nor to require the cessation of concerted action nor did such action by the parties spring from the compulsion of either the seeking of the injunction or the issuance of the Complaint.

Assuming arguendo that the Board did, in this case, issue against Respondent its Order in the same fashion as it did in Albert Evans, Trustee of Local 391, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, et al., (110 NLRB No. 122, page 2) where the Board limited the cease and desist order from "inducing strike action by employees of any employer other than Thurston where the object thereof is to enforce any employer to cease doing business with Thurston". Respondent is already under contractual limitation from taking any such action in view of the terms of the collective bargaining agreement now in effect—and intends no violation thereof, and no reason exists for such order.

This case is also distinguishable from Consolidated Edison Company of New York et al. vs. NLRB, 305 U.S. 197, because of the complete settlement of the controversy at issue. In the Consolidated Edison case, the em-

ployer could have, at any time after it ceased the unfair labor practices, continued to commit the same practices without any interference because there was no binding contract to prohibit these practices, while in this case there is a contract prohibiting the Respondent from striking.

Also distinguishable, is NLRB vs. Pacific Greyhound Lines, Inc., 303 U.S. 261. In that case, the question of mootness did not arise until after the Board had issued its cease and desist order. However, in this case, the controversy was moot even before the Complaint was issued.

The Trial Examiner cites three cases in support of his denial to dismiss the Complaint on the grounds of mootness (Mexia, Spitzer and McGraw). These cases are clearly inapplicable to the factual circumstances of the case at bar.

In NLRB vs. Mexia Textile Mills, Inc., (339 U.S. 563, 567), the employer attempted to render the controversy moot only after the Board had issued its Order.

In NLRB vs. Spitzer Motor Sales, Inc., (211 Fed. 2d 235), the controversy was not settled and not moot because of the fact that the agreement of adjustment was not made until after the Board had tried the case on its merits and was awaiting a final decision and order from the Board.

And, in NLRB vs. F. H. McGraw & Co., (260 Fed. 2d 635), where the employer abandoned the unfair labor practices prior to the hearing, but unlike the case at bar, he was not bound by a contract to discontinue the practice during the term of said contract.

The dicta in Local 74, United Brotherhood of Carpenters and Joiners, AFL, et al. vs. NLRB, (341 U.S. 707, 715) is the only case directly on point with the facts and circumstances of the present case. In applying this dicta, this

case is now clearly rendered moot due to the fact the underlying dispute was resolved prior to the issuance of the Complaint.

CONCLUSIONS

For the aforesaid reasons, we respectfully urge the Board to reconsider its Decision and Order and dismiss the Complaint and since this problem is of such great magnitude, we respectfully request the Board grant oral argument on the question herein raised.

Respectfully submitted,

Louis P. POULTON

Louis P. Poulton,

*Attorney, For and in behalf of
Local 850, International Association
of Machinists, AFL-CIO*

Dated at Washington,
D.C., this 23rd day
of March, 1956

650

Order Denying Motion and Request

On March 15, 1956, the Board issued a Decision and Order¹ in the above-entitled proceeding. Thereafter, on March 26, 1956, counsel for the Respondent in Case No. 16-CC-48 filed a motion for reconsideration of the aforesaid Decision and Order and requested leave to argue orally. By letter dated March 27, 1956, counsel for the Respondent in Case No. 16-CC-47 concurred in the said motion. The Board having duly considered the matter,

IT IS HEREBY ORDERED that the said motion be, and it hereby is, denied on the ground that nothing new has been presented that was not previously considered by the Board; and

IT IS FURTHER ORDERED that the aforesaid request for oral argument be, and it hereby is, denied.

Dated, Washington, D. C., April 19, 1956.

By direction of the Board:

FRANK M. KLEILER
Executive Secretary

1 EXCERPTS FROM TRANSCRIPT OF TESTIMONY

BEFORE THE NATIONAL LABOR RELATIONS BOARD,
SIXTEENTH REGION

Case No. 16-CC-47

In the Matter of:

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION LOCAL NO. 886, AFL,

AND

AMERICAN IRON AND MACHINE WORKS COMPANY

Case No. 16-CC-48

In the Matter of:

LODGE NO. 850, INTERNATIONAL ASSOCIATION OF
MACHINISTS, AFL

AND

AMERICAN IRON AND MACHINE WORKS COMPANY

Courtroom, Ninth Floor,
U. S. Post Office Building,
Oklahoma City, Oklahoma,
Wednesday, November 10, 1954.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a. m.

Before: SIDNEY L. FEILER, Trial Examiner.

APPEARANCES:

LEONARD L. PICKERING, Esq., 300 West Vickery, Fort Worth, Texas, appearing on behalf of the General Counsel.

FRANK GRAYSON, Esq., 410 Leonhardt Building, Oklahoma City, Oklahoma, appearing on behalf of respondent Teamsters.

EVERETT E. COTTER, Esq., 1706 First National Building, Oklahoma City, Oklahoma, appearing on behalf of the charging party.

LOUIS P. POULTON, Esq., Machinists' Building, Ninth Street and Mount Vernon Place, Northwest, Washington, D. C., and

STEVEN E. WILLIAMS, Grand Lodge Representative, Fort Worth, Texas, appearing on behalf of respondent Machinists.

7 Mr. Pickering: At this time, Mr. Examiner, we'd like to ask the reporter to mark for identification the General Counsel's formal exhibits.

Mark as General Counsel's Exhibit 1-A the original charge, telegraphic charge, dated September 23, 1954, against Respondent Teamsters in Case No. 16-CC-47.

Mark as General Counsel's Exhibit 1-B the first amended charge, dated September 24, 1954, against Respondent Teamsters in Case No. 16-CC-47.

Mark as General Counsel's Exhibit 1-C the affidavit of service of General Counsel's 1-B, which has a return receipt attached thereto.

Mark as General Counsel's Exhibit 1-D the original charge against the Respondent Machinists, dated September 24, 1954, in Case No. 16-CC-48.

Mark as General Counsel's Exhibit 1-E the affidavit of service of General Counsel's Exhibit 1-D, which has a return receipt attached thereto.

Mark as General Counsel's Exhibit 1-F the complaint against Respondent Teamsters in Case No. 16-CC-47, dated October 23, 1954, with copies of original and amended charges attached thereto.

Mark as General Counsel's Exhibit 1-G the complaint against Respondent Machinists in Case No. 16-CC-48, dated October 23, 1954, with a copy of the original charge attached thereto.

Mark as General Counsel's Exhibit 1-H the order consolidating the cases and notice of hearing in Cases Nos. 16-CC-47 and 16-CC-48, which order is dated October 23, 1954.

Mark as General Counsel's Exhibit 1-I the affidavit of service of order consolidating cases and notice of hearing and the complaints in Cases 16-CC-47 and 16-CC-48, which affidavit of service has attached thereto return receipts.

Mark as General Counsel's Exhibit 1-J the answer of the Respondent Teamsters, dated November 1, 1954.

9. Mark as General Counsel's Exhibit 1-K the Telegraphic request of Respondent Machinists to postpone hearing until November 10, 1954.

Mark as General Counsel's Exhibit 1-L a telegraphic order of the Regional Director dated October 27, 1954, postponing the date of hearing to November 10, 1954, with confirmations of delivery attached.

Mark as General Counsel's Exhibit 1-M a motion for bill of particulars filed by the Respondent Machinists in Case No. 16-CC-48, which motion also contained a request for extension of answer time for the Machinists.

Mark as General Counsel's Exhibit 1-N a telegraphic order of the Regional Director extending the answer date of Respondent Machinists to November 8, 1954, pursuant to Machinists' request in its motion for bill of particulars.

Mark as General Counsel's Exhibit 1-O the telegraphic request of Respondent Machinists for further extension of answer time, dated November 2, 1954.

Mark as General Counsel's Exhibit 1-P telegraphic order of Regional Director denying requests of Respondent Machinists for further extension of answer time as contained in GC-1-O, dated November 2, 1954.

Mark as General Counsel's Exhibit 1-Q telegraphic message of Trial Examiner Sidney Feiler's ruling upon Respondent Machinists' motion for a bill of particulars, which is General Counsel's Exhibit 1-M, and which teletype 10 message is dated November 2, 1954.

Mark as General Counsel's Exhibit 1-R the bill of particulars, dated November 3, 1954, filed by counsel for

General Counsel pursuant to General Counsel's Exhibit 1-Q, which bill of particulars has attached thereto return receipts indicating service.

Mark as General Counsel's Exhibit 1-S Respondent Machinists' telegraphic request, dated November 3, 1954, for further extension of answer time and for postponement of hearing.

Mark as General Counsel's Exhibit 1-T the telegraphic order of Regional Director, dated November 3, 1954, denying the Respondent Machinists' request, as contained in General Counsel's Exhibit 1-S.

Mark as General Counsel's Exhibit 1-U the Respondent Machinists' request for permission to appeal to Trial Examiner's ruling on respondents' motion for bill of particulars.

Mark as General Counsel's Exhibit 1-V a teletype message, dated November 8, 1954, from Frank M. Kleiler, Executive Secretary of the National Labor Relations Board, denying the Respondent Machinists' request to appeal the Trial Examiner's ruling on its motion for bill of particulars.

Mark as General Counsel's Exhibit 1-W the Respondent Machinists' answer, which answer is dated November 5, 1954, and stamped received by Sixteenth Region, Fort Worth, National Labor Relations Board, on November 8, 1954.

At this time, Mr. Examiner, I would offer the foregoing exhibits in evidence.

Trial Examiner: Is there any objection?

Mr. Grayson: No objection on the part of the Teamsters. If the Trial Examiner please, I think maybe we should point out that the respondent is listed as General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL. For convenience I would like to refer to the respondent as Teamsters' Local 886.

Trial Examiner: Surely.

Mr. Poulton: I have no objection to the exhibits, but I would like the record to show on my statement that I re-

ceived my bill of particulars from the Trial Examiner and not from the Regional Office in Fort Worth.

Mr. Pickering: I might also, in connection with that, state for the record that the Respondent Machinists and the Respondent Teamsters and the charging party were each served by registered mail a copy of the Bill of particulars and that I instructed my secretary to mail copies by regular mail to the attorneys of record in the case, Mr. Cotter for the company, Mr. Grayson for the Respondent Teamsters, and Mr. Poulton for the Respondent Machinists, and I understand that there was some slip-up either in the United States mail or by my secretary, so as the Respondent Machinists' attorney did not receive their copy.

Mr. Poulton: I would like to state I am not raising any issue as to that particular point.

Trial Examiner: There being no objection to the receipt of the exhibits, they are received in evidence.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits 1-A through 1-W for identification and were received in evidence.)

13 Mr. Poulton: Now, Mr. Feiler, I would like to make a motion to dismiss the complaint. I may.

Trial Examiner: All right.

14 Mr. Poulton: The respondent requests the Trial Examiner to dismiss the complaint in its entirety as to the Machinists, Respondent Machinists, on the grounds that the controversy is now rendered moot.

On October 21, 1954, the American Iron and Machine Works Company and Lodge 850, International Association of Machinists, AFL, signed a collective bargaining agreement resolving all differences between the parties concerning the terms and conditions of employment. There's no longer any picketing; there's no longer any strike.

I would like to cite in support of this motion the case of Local 74, United Brotherhood of Carpenters and Joiners, AFL, et al, vs. NLRB—and I am sorry to say that my sec-

retary made a typographical error. She has it listed as 341 US 707. I am sure the ~~reports~~ don't go that high. I think it was 321, sir. It was decided in 1951.

In that case the Supreme Court had the same type of situation before it. It had a violation of Section 8 (b) (4), (A). There was picketing on a renovation project and the project ended. Now, at Page 715 the court states as follows:

"This case has not been rendered moot by the completion of the renovation project. The complaint was against petitioner's use of secondary pressure upon Watson's in a manner prescribed by the statute. The use of such pressure on this renovation project was merely a sample of what might be repeated elsewhere if not prohibited."

Here's the sentence that means quite a bit to me:

"The underlying dispute between petitioner's and Watson's has not been shown to have been resolved."

I take that to mean that the Supreme Court would have found the controversy moot if the underlying dispute had been resolved, and in this case the contract is settled, all differences are taken care of, and we consider this controversy as moot.

There is another case cited in 32 LRRM at Page 2362. It's Benz vs. Compañía-Naviera Hidalgo—I think that's the proper pronunciation; I am not sure of that.

Trial Examiner: To be fair, you might spell it to the court reporter.

Mr. Poulton: B-e-n-z vs. C-o-m-p-a-n-i-a- N-a-v-i-e-r-a H-i-d-a-l-g-o. The Ninth Circuit Court of Appeals held in that case that the court was not empowered to decide moot questions of abstract propositions or to declare for the Government future cases, principles of law which cannot affect the result as to the thing before it.

Now, the Board cites for authority as to these moot situations Consolidated Edison Company of New York et al. vs. NLRB 305 US 197.

In that case I should say the controversy was not actually settled. There was a ceasing of the unfair labor practice

at the time and it could have continued any other time. In this case we have a binding contract which I am ready to offer in evidence, and I think the General Counsel will stipulate that it is the contract between the parties

16 resolving their differences, and therefore we consider this problem as being moot and without prejudicing ourselves we would not like to participate in the rest of the hearing through a prejudiced and moot question.

Trial Examiner: How about that, Mr. Pickering?

Mr. Grayson: If the Trial Examiner pleases, I think in order to save duplication we, on behalf of the Teamsters, desire to make the same motion to dismiss for the reason that the question is moot, and, of course, I don't know how the Trial Examiner is going to rule on it, but we would like to submit a brief on the question after the hearing.

18 Mr. Poulton: I would like to add something to my statement, Mr. Feiler. I think this would be a different proposition altogether if the injunction had been granted by the Federal District Court here, but that injunction was denied, sir, and I think that's another grounds for the controversy.

Mr. Grayson: If the Trial Examiner please, I would like to make a very few remarks in behalf of my motion to dismiss. The Respondent Teamsters in this case, inasmuch as the controversy between American Iron and the Respondent Machinists has been resolved, settled, are now handling the freight of the American Iron. There are no allegations in the complaint of the General Counsel of which the Respondent Teamsters could in any way be guilty of at this time. Furthermore, Section 101 of the Labor Management Relations Act sets forth the policy of the National Labor Relations Act and the Board that administers it, the purpose of which is to promote the free flow of commerce between the states and in substance to develop better relationship between management and labor, and we would like to point out, Mr. Trial Examiner, that the only

effect that this hearing could have would be to widen the chasm between labor and management and in all possibility to interrupt the flow of commerce in the future, and we think that this hearing is superfluous, that it should be dismissed, the question has been resolved.

19 Mr. Poulton: Mr. Examiner, if you would like to read the contract I am willing to offer it now at this time.

Trial Examiner: No, I'll take your word for it now, although you can offer it later if you want to. I'll take your word for that.

Well, I will deny the motion at this time. That doesn't preclude counsel from getting together whatever authorities they can and calling my attention to it either at the end of the hearing or in a brief, as you suggested, Mr. Grayson, later. That's my ruling at this time. Now, if you have—

Mr. Poulton: Mr. Feiler, at this time I would like to ask for a recess so that I can request the Board to permit me to appeal your ruling on the moot question, if I may.

• * * * * Trial Examiner: All right, now, let's go back to Mr. Poulton's application. I certainly don't want to stand in your way to get an appeal off to Washington. By the same token, I don't want to hold up the whole case until 20 we get a ruling. What do you want, about a half hour?

Mr. Poulton: About a half hour would be fine, sir. It will just take a few minutes to write up the telegram.

Trial Examiner: All right. Do you have much more, Mr. Pickering, before you would be ready to call your first witness?

24 Mr. Pickering: At this time General Counsel would offer an amendment to Respondent Machinists' complaint in Case No. 16-CC-48 and moves to amend said com-

plaint by adding a new paragraph to be enumerated as Paragraph 12 (a), to allege:

"On or about October 18 or 19—"

Trial Examiner: Excuse me. Are you sure it's 12?

Mr. Pickering: I am adding, in other words, inserting a new paragraph, Mr. Examiner, to be enumerated as 12. (a).

Trial Examiner: Twelve ~~here~~ is a sort of summary paragraph referring to four other paragraphs. I just wondered if that's what you had in mind, that's all.

Mr. Pickering: I might state in that connection, Mr. Examiner, that there is no connection between Paragraph 12 and Paragraph 12 (a). However, it's my desire that Paragraph 12 (a) come before Paragraph 13, and that is the purpose for amending it in that form.

Trial Examiner: All right.

25 Mr. Poulton: May I make a suggestion so we won't be confused. Would it be just as well or easy, since Paragraph 12 is a summary, to number it 11 (a) and then we'd have it between that and the summary.

Trial Examiner: You decide where you want it to come in, Mr. Pickering.

Mr. Pickering: It could be enumerated, Mr. Examiner, as 11 (a). It will allege as follows:

"On or about October 18 or 19 the Respondent Machinists, by its agents, two pickets, Johnny Roth and an accompanying picket whose name is unknown to the General Counsel, did picket on the premises of Lee Way around an American Iron truck, while the American Iron truck was present on the premises of Lee Way delivering a shipment of freight to Lee Way."

That will conclude that paragraph.

Trial Examiner: Any objection to the amendment?

Mr. Poulton: At the moment I would like to object—I may withdraw my objection later, and in that case I would like to request permission to, if the—Let's have a ruling first. Go ahead.

Trial Examiner: Well, I'll grant the motion, again, with all these amendments, with the conditions that General Counsel will try to arrange his presentation so that matters of amendment come in towards the close of his presentation and also that counsel in his case for the Machinists will have the right to at least bring the matter to my 26 attention for additional time if he feels he needs it.

Mr. Poulton: Now, sir, I would like to make a motion to amend Respondent Machinists' answer in that we add Paragraph 11 (a) which would state, "Respondent denies generally and specifically, each and every, all and singular, the allegations in Paragraph 11 (a) of the complaint.

Trial Examiner: That's to include this new material?

Mr. Poulton: That's correct.

Trial Examiner: All right, that motion is granted.

Mr. Pickering: I move to amend the Machinists' complaint further by adding a new paragraph to be enumerated as Paragraph 11 (b), to state:

"By the conduct set forth above in Paragraph 11 (a) the Respondent Machinists did cause, induce and encourage the employees of Lee Way to engage in a concerted refusal in the course of their employment to handle freight from American Iron."

That concludes Paragraph 11 (b).

Trial Examiner: Any objection to this?

Mr. Poulton: I raise the same objection.

Trial Examiner: All right, I'll grant it with the same conditions.

Mr. Poulton: All right, sir, I would like to make a motion to amend the Respondent Machinists' answer by adding Paragraph 11 (b), which would state as follows: "The

27 Respondent denies generally and specifically, each and every, all and singular, the allegations and conclusions in Paragraph 11 (b).

Trial Examiner: That motion is granted.

Mr. Pickering: I would further amend the complaint against the Respondent Machinists so that at all points after Paragraph 11, where Paragraph 11 or 12 is referred to, that Paragraphs 11 (a) and 11 (b) be referred to also.

Trial Examiner: That motion is granted.

Mr. Pickering: And that at all places where carriers Gillette, Hall, Santa Fe and T. I. M. E. are referred to that Lee Way also be referred to.

Mr. Poulton: I would like to raise an objection. Is Mr. Pickering now stating in his bill of particulars wherever they mention—

Mr. Pickering: That's at all places from Paragraph 11 and 12 forward to the end of the complaint.

Mr. Poulton: To Paragraph No. 17, is that correct?

Mr. Pickering: That's correct.

Mr. Poulton: I still have the same objection, but—

Mr. Pickering: In other words, those are primarily the conclusionary paragraphs of the complaint.

Trial Examiner: That where you have all reference to the carriers, Gillette, Hall, Lee Way, Santa Fe and T. I. M. E., you have got Lee Way mentioned there in this group anyway, Paragraphs 12 and 13 mention it specifically.

28 Mr. Pickering: I believe that's correct, and I withdraw the offer of amendment as to Lee Way.

Trial Examiner: All right, then, your motion to provide in substance that all references to Paragraphs 11 and 12 in the sections beyond Section 11 in the Machinists' complaint shall include 11 (a) and 11 (b), I'll grant that motion.

31 Mr. Pickering: Mr. Examiner, at this time I have one further exhibit I would like marked as General Counsel's Exhibit 1-X, which is the copy of the telegram sent by Respondent Machinists—

Mr. Poulton: And Respondent Teamsters.

Mr. Pickering: —and Respondent Teamsters to the Board appealing from a Trial Examiner's ruling on the respondents' motion to dismiss the complaints in 16-CC-47 and 16-CC-48.

Mr. Poulton: May I make a technical correction. It is a request to get permission to appeal.

Trial Examiner: All right, the exhibit will be received in evidence.

(Thereupon, the document above referred to was marked General Counsel's Exhibit 1-X for identification and was received in evidence.)

32 Mr. Poulton: Respondent Machinists requests permission to amend its answer as to Paragraph 2, the respondent admits the allegations contained in Paragraph 2 of the complaint; as to Paragraph 3 of the respondents' answer—

Trial Examiner: Of the complaint.

Mr. Poulton: No, as to Respondent Machinists' answer to Paragraph 3 of the answer we would like to change it and amend it to admit the allegations contained in Paragraph 3 of the complaint. Respondent Machinists would like to amend its answer as to Paragraph 5 of the answer to have it admit the allegations contained in Paragraph 5 of the complaint.

Trial Examiner: Does that conclude your amendment?

Mr. Poulton: That concludes my amendment.

Trial Examiner: All right, the application is granted and the answer is amended accordingly.

Mr. Pickering: You amended your answer to admit

Trial Examiner: Two, three and five.

Mr. Pickering: Paragraphs 2, 3 and 5?

Mr. Poulton: Yes.

34 Mr. Pickering: Mr. Examiner, by stipulation with counsel for the Machinists at this time I would

amend my complaint in Paragraph No. 6 to strike the word "freely" which appears in the last sentence of Paragraph No. 6, where it is stated, "In connection with said strike, the Respondent Machinists has freely picketed," the word "freely" appearing before "picketed" be stricken from my—

Trial Examiner: All right, any objection?

Mr. Poulton: No, I would like to add to that that is the complaint in 16-CC-48.

Mr. Pickering: That's correct, the Respondent Machinists.

Trial Examiner: All right, there being no objection, the motion is granted.

Mr. Poulton: At this time Respondent Machinists would like to amend its answer in Case 16-CC-48 to admit the allegations contained in the amended Paragraph 6 of the complaint.

Trial Examiner: Application is granted.

Mr. Pickering: I now propose by stipulation by and between Respondent Machinists, by its attorney and counsel for the General Counsel, that at no time material to the complaint has the Respondent Machinists been the collective bargaining representative of any of the employees of American Iron who have picked up freight for American Iron at the common carriers' places of business, which common carriers are mentioned in the Machinists' com-

plaint or deliver freight of American Iron to the aforesaid common carriers for transportation; that

there is no dispute between the Respondent Machinists and American Iron concerning the wages and hours or terms or conditions of employment for such employees of American Iron; that in furtherance of its dispute with American Iron referred to in Paragraph 6 of the complaint the Respondent Machinists, since on or about September 15, 1954, has followed American Iron's tricks driven by employees of American Iron who are not within the bargaining unit represented by the Machinists to the dock terminals and loading facilities of the aforementioned com-

mon carriers named in Paragraph 5 of the complaint and has maintained a picket or two pickets around American Iron trucks while the trucks of American Iron were present on the common carriers' premises, delivering or picking up freight; and that said pickets at the time of their picketing were upon the premises of the common carriers mentioned in Paragraph 5 of the complaint and picketed in close proximity to the truck of American Iron; that ordinarily before the dispute which arose between American Iron and the Respondent Machinists September 15, 1954, that the respective carriers mentioned in Paragraph 5 of the complaint ordinarily picked up freight and delivered freight at the places of business of American Iron, and that very occasionally when an emergency shipment needed to be transported to one of the respective carriers, that during the daylight hours an employee, Bill Hancock, who was classified as a mail driver and drove a pick-up truck, would carry such occasional emergency shipments, and that upon occasions of an emergency shipment being too large to be carried upon the mail pickup truck, that a truck driver represented by the Machinists would carry such emergency shipment to the premises of the respective carriers, it being fully understood that such emergency shipments occurred rarely and infrequently, and that ordinarily all shipments and deliveries were picked up and delivered at the American Iron premises by agents of the respective carriers; and that if an emergency shipment at night needed to be transported to the premises of a carrier such occasional emergency shipment would be carried to the premises of the carrier by a shipping clerk or clerks who are represented by the Respondent Machinists in the job as a shipping clerk.

Trial Examiner: Does that end your stipulation, Mr. Pickering?

Mr. Pickering: I believe that concludes the stipulation.

Trial Examiner: How about that, Mr. Poulton?

Mr. Poulton: I will so stipulate, sir.

37 Mr. Pickering: Paragraph 10 be amended to read:

"That on or about September 17, 1954, the Respondent Machinists maintained a picket on the premises of Lee Way around an American Iron car and trailer during the time that an employee of American Iron was present on Lee Way premises delivering an American Iron freight shipment with an American Iron car and an American Iron trailer, which American Iron car had a round American Iron emblem approximately twelve inches in diameter upon the front door panels of the car and a smaller emblem of American Iron on either side of the American Iron trailer."

That will conclude the amendment of Paragraph 10.

Trial Examiner: Let the court reporter read that back and if there isn't a word or two there exactly the way you want it, make the corrections as we go along.

(Read.)

Trial Examiner: Any objections to the amendment?

38 Mr. Poulton: No objection.

Trial Examiner: There being none, it is granted.

Mr. Poulton: At this time the Respondent Machinists would like to amend their answer in Case 16-CC-48, Paragraph 10 of the answer, be amended to admit the allegations contained in Paragraph 10 of the complaint.

Trial Examiner: Motion is granted.

39 Mr. Poulton: I have a stipulation to agree to.

Mr. Pickering: Stipulation rather than amendment?

Mr. Poulton: Yes, sir, stipulation. The proposed stipulation between the General Counsel and the Respondent Machinists reads as follows:

"The operation of pickets was as follows: the pickets came from a car when the American Iron truck arrived at the carrier's premises, put on a picket sign and walked in a 'U' shape from the dock around the truck back to the

dock on the other side and continued this operation in close proximity around the truck and car and trailer of American Iron only while the vehicles were on the carrier's premises. The pickets left when the trucks left."

Mr. Pickering: General Counsel will so stipulate.

40 Mr. Poulton: Another stipulation between the General Counsel and the Respondent Machinists reads as follows:

"The pickup truck referred to in the complaint, American Iron which delivered freight to the common carriers had on each side of the doors of the truck an American Iron sign approximately twelve inches in diameter."

Mr. Pickering: General Counsel so stipulates.

Trial Examiner: That goes back to Paragraph 10, I think, doesn't it, of the Machinists' complaint? Is that what that refers to?

Mr. Pickering: There's more than one paragraph; as I understand his proposed stipulation will go to all parts of the complaint where an American Iron truck is referred to or American Iron car.

Trial Examiner: Then, as I understand it, it's agreed then that—

Mr. Pickering: All American Iron vehicles had this twelve inch American Iron emblem upon the side.

48 Trial Examiner: Paragraph 10 was amended to indicate that—everything I am saying now is subject to correction—Paragraph 10 originally set forth that the shipment was made by a private car and trailer. There was an amendment to indicate that the shipment was made by a duly marked American truck and trailer, is that correct?

49 Mr. Pickering: That's correct.

Trial Examiner: And as so changed it was admitted.

Mr. Poulton: That's correct, sir.

Trial Examiner: And as to that incident there was that "U" shape picketing.

Mr. Poulton: And I think there is a further part of the stipulation that the picketing was around the American Iron truck in the "U" shape.

Mr. Pickering: If it wasn't General Counsel would stipulate that at this time.

Mr. Poulton: I think it was.

Trial Examiner: All right. Now, Paragraph 11—

Mr. Pickering: That is admitted; is that correct, ten is admitted?

Mr. Poulton: Ten is admitted; not eleven.

Trial Examiner: Ten is admitted. Now we go to eleven, which alleges an incident of requesting an employee of Santa Fe to see to it that American Iron freight was not handled. That's denied, is that right?

Mr. Poulton: That is correct, sir.

50 Mr. Poulton: I propose the stipulation between General Counsel and Respondent Machinists as follows:

"On or about October 18 or 19 Machinists, by its agent, maintained a picket and did picket the American Iron truck while it was on the premises of Lee Way delivering freight, American Iron freight," I should say.

Mr. Pickering: I would agree to that stipulation, Mr. Examiner, with this clarification, that this picket picketed upon the premises of Lee Way in a "U" shape around the American Iron truck.

Trial Examiner: Is that agreed to?

Mr. Poulton: I will agree to that, yes.

Mr. Pickering: In close proximity to the truck.

55. **James Oliver Gray.**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

56. **By Mr. Pickering:**

Q. Would you state your full name and address for the record, please. A. James Oliver Gray, 1520½ Northwest 33rd.

Q. That's Oklahoma City? A. That's right.

By Mr. Pickering:

Q. And you are an employee of American Iron and Machine Works? A. Yes, sir.

Q. And you were such an employee during the months of September and October of this year, is that correct? A. Yes, sir.

Q. What are your job duties ordinarily? A. Ordinarily I work in the inventory department, but during the strike I was working out—working in the shipping department as a helper and deliverer.

Q. What did you do in that connection? A. Oh, I helped box these shipments and load them on these delivery trucks and then helped deliver them around to the different carriers.

Q. In making deliveries to different carriers did you accompany Mr. Bill Hancock on occasions? A. Yes, sir, I was with him, I believe, every evening that we went out.

Q. And Mr. Hancock is the driver of a mail pickup truck for American Iron? A. Yes, sir.

Q. Now, when was the first occasion that you accompanied Mr. Hancock to the carriers with American Iron freight?

The Witness: I don't know whether it was the first or second day of the strike.

Mr. Pickering: It will be stipulated, I believe, it is admitted by way of the answer that the strike did start on September 15, 1954.

Trial Examiner: Is that agreeable?

Mr. Poulton: That's correct.

Trial Examiner: So on either September 15 or 16 you went, first went on the delivery truck, is that right?

The Witness: Yes, sir.

By Mr. Pickering:

Q. On that date to what carriers did you go? A. 58 Santa Fe, Gillette, I believe T. I. M. E. I can't remember all of them. Santa Fe and Gillette and T. I. M. E., and I don't know whether we went to Railway Express.

Q. Did you go to Lee Way or D. C. Hall on that date? A. I believe D. C. Hall was on the first trip. I don't remember Lee Way.

Q. Did anything unusual occur during the time that you were making the deliveries at any of these carriers? A. At Santa Fe Mr. Foster and Mr. Williams, Chapman Williams, accompanied us out there and Mr. Foster—

Q. Before going further, would you state who Mr. Foster is. A. Well, I understand he's the business representative for the union, the Machinists Union.

Mr. Poulton: The respondent will stipulate that Mr. Foster is the business representative of Local 850, International Association of Machinists, A. F. of L.

59 By Mr. Pickering:

Q. What did Mr. Chapman Williams do? A. Williams picketed our truck that evening around—

Q. Did he wear a picket sign, an apron? A. Yes, sir.

Q. Will you describe that to the Examiner, please, the

picket apron. A. Well, it had their IAM Machinists on strike, A. F. of L; I believe.

65 Q. Who said that? A. Mr. Foster.

Q. Was there anything said between Mr. Foster and this dock hand as to accepting or not accepting your freight shipment? A. Well, I didn't actually hear that, hear anything to that effect at that time.

73 Trial Examiner: Can we have an agreement as to when that strike ended? We know when it started; September 15.

Mr. Poulton: October 21, 1954.

Trial Examiner: What?

Mr. Poulton: October 21, 1954, the strike ended, including the picketing, all picketing.

Trial Examiner: Is that agreed?

Mr. Pickering: Yes, sir, General Counsel will stipulate to that.

75 Cross-examination.

By Mr. Poulton:

Q. On each delivery that you made to the carrier, were you accompanied by Mr. Bill Hancock? A. Yes, sir.

Q. And he drove the truck at all times? A. Yes, sir.

76 Q. Which truck did you use, sir? A. The green pickup truck.

Q. Which one, sir? A. The green pickup truck.

Q. Does that truck have signs on it? I think we have stipulated to it. Is that the truck that has the signs on it? A. Yes, sir.

84 Q. Now, you stated that Mr. Foster at Santa Fe on September 15 or 16 went up on the dock looking

for a steward, is that correct, sir? A. Well, I didn't know whether he was really looking for a steward or not, but he went up on the dock looking for someone, I presume.

Q. He didn't tell you he was going up to look for a steward, did he? A. He never spoke to me personally.

Q. Then you don't know who he was looking for if he was even looking for someone, do you? A. I presumed he was looking for someone or he wouldn't have gone up on the dock.

Q. But you don't know as a known fact that he was looking for anyone? A. After Mr. Smith came out and I spoke to him and they got to talking, and that's where I presumed he was looking for someone with authority.

Q. You say he talked to Mr. Smith, is that correct? A. I believe it's this gentleman right here, if this is Mr. Smith.

Q. Do you know what Mr. Smith's capacity with Santa Fe is?

Mr. Pickering: We'll stipulate that it is Mr. J. C. Smith who has been referred to as the freight agent for Santa Fe Trails Transportation Company, Oklahoma City.

85 Mr. Poulton: May I inquire whether he was in charge of the office?

Mr. Pickering: Yes, he is in charge of the office in Oklahoma City.

87 Q. Now, was anybody else nearby when that conversation took place, referring to the Smith and Foster conversation? A. I think there were two other men. I didn't notice.

Q. Do you remember who they were? A. No, sir.

89 Q. Can't remember. All right, now, on September 15 or 16 you left Santa Fe and you went to Gillette, is that correct? A. I believe.

Q. That's what you testified. A. I did? O. K.

Q. And you told that you were followed from Santa Fe to Gillette by Mr. Foster or anyone else? A. Mr. Foster and Chapman Williams went over there with us.

Q. What kind of car did he use this time? A. He had his Mercury. That was in this Mercury.

Q. Had the Mercury? A. Yes, sir.

Q. What happened when you pulled up to the dock? A. Well, we started to unload and Chapman Williams was picketing our truck and Edd Foster went inside and was talking to this foreman and—

Q. Do you know what the foreman's name is? A. No, I can't recall his name.

92 Q. You just supposed he was a foreman, didn't you? A. Well, yes.

95 Q. Didn't have any door on the truck. Now, I believe the next stop you made was T. I. M. E., is that right? A. That's right.

Q. And I believe you stated this time Mr. Foster talked to a dock hand, is that right? A. I presume that's who he was.

99 Q. Now, do you know, could you tell us exactly what the dock hand said and exactly what Mr. Foster said, give us the conversation? A. Well, I don't 100 know what the dock hand said. He had a two-wheeler in his hand.

Q. A what, sir? A. A two-wheeler, pushcart, whatever you call them, and I heard Mr. Foster say something about he would lose his union card or his place in the union.

Q. Were they the exact words that Mr. Foster used? A. I remember hearing the union card and—

Q. You heard union card, that's all you can actually remember? A. No, I heard something about losing the union card.

Q. Just what were the context of those words, if you remember, what order? A. Well, I couldn't say what order he called it; he would lose his position or his—I don't know whether he was a steward or what it was, but I remember hearing him say he would lose something in connection with the union.

Q. Lose something; what? A. Well, it was with his union card or his position in the union.

Q. What did Mr. Foster say? A. That's what Mr. Foster—

Q. He said he would lose either his card or the union position? A. Not both.

Q. Which one did he say? A. I couldn't say.

101 Q. You don't remember that, is that correct? A. I couldn't get which one he meant, whether he meant his union card or his position in the union.

Q. What were the words that Mr. Foster used? A. Well, I just got in about—

Mr. Pickering: I object, Mr. Examiner, repetitions. The witness has answered time and time again.

Trial Examiner: I will allow it. Tell us once; this is final. What did you hear Mr. Foster say to this other man, if anything?

The Witness: Well, I didn't get in on the first part of it, but I heard Mr. Foster say that—I cut in on "lost your union card" or his position, I heard the words lose and union and that's about it.

By Mr. Poulton:

Q. So, in other words, you heard words lose and union and that's all, sir? A. Well, there was a couple of others in that that I couldn't say which position or where they were exactly.

Q. All you can remember is lose union. A. That's what I remember.

Q. Was there anything else in that conversation that you overheard? A. No.

102 Q. You didn't hear any more. I have here the next stop on September 15 or 16 you went to D. C. Hall. A. Yes, sir.

103 Q. Is that correct? A. Yes, sir.

Q. Exactly what happened there, sir, would you tell me? A. Well, as we backed up to unload, Chapman Williams picketed our truck and Edd Foster was standing out by the side of it, oh, ten or fifteen feet from there, and one of the dock hands wheeled a two-wheeler up there to take our boxes and Edd told him no, he couldn't help us, and this dock hand backed off and left.

110 Q. Now, referring you to the D. C. Hall delivery, approximately a week after you made the other delivery, was Mr. Hancock with you at that time? A. Yes, sir.

Q. What did he do when he pulled into the dock? A. Well, Mr. Hancock got up on the dock and he was sorting out freight bills, and Cleve Dodd and I threw out a couple of easing wagons and a carton, I think, two or three items, and this man on the dock said that he couldn't help us at all tonight, and so I went over there and I told Mr.

111 Hancock what he said and he says, "Well, we'll see what we can do," and Mr. Hancock went up to the office and we just sat there then waiting to see what was going to—whether they were going to take it or not, and one of the dock hands asked Edd Foster what he was doing for the good of the country and Edd Foster says he's trying to raise the wages of the workingman. This dock hand says, "Well, we'll help you," and pretty soon, I guess ten minutes approximately, Mr. Hancock came back from the office and says, "Well, let's go," so we took the shipments back to American Iron and unloaded them and picked up non-union freight and hauled it.

Q. Now, did Mr. Foster say anything else at that time? A. Oh, he was talking to George Wimberly; I couldn't hear anything.

Q. He didn't talk to anybody else on the dock, did he?
 A. I don't think so.

113 By Mr. Poulton:

Q. Now, I believe you stated you went to Gillette on approximately September 24? A. Well, we went to Gillette about every night, almost.

Q. Could you tell me when Mr. Bob Pickett was at Gillette picketing your truck? A. I couldn't say the exact day that he was there, but he was there at Gillette on several occasions.

Q. I believe you said that Mr. Pickett was a picket captain? A. That's what I understood Mr. Pickett was doing, he was picket captain.

Q. What gave you the idea he was a picket captain? A. Well, I never saw him walk the picket and he usually seemed to be in charge of the pickets out in front of the shop and when he'd take them after us.

Q. By shop you are referring— A. American Iron.

Q. Now, I believe you stated you saw Mr. Pickett get up on the dock, is that correct? A. Yes, sir.

Q. And I believe you stated Mr. Pickett talked to this other employee, is that correct? A. I saw him talk to one or two persons. I don't remember exactly how many.

Q. Did you hear what he said? A. No, sir.

121 Further redirect examination.

By Mr. Pickering:

Q. Mr. Gray, how close were you to this picket sign? A. Oh, sometimes when I'd get off the truck I'd be standing right next to the picket.

Q. Approximately how many times would you estimate prior to the hearing that you saw the picket sign that was worn at the carriers' premises? A. Oh, half a dozen days at half a dozen different places each day, approximately.

Q. And on none of those occasions did you see this lettering at the bottom of the sign saying we do not ask any employees to cease work, is that correct? A. I never did see it during that time.

Q. Now, this sign that you saw here in the courtroom and were shown by Mr. Poulton on the 16th of October, would you tell us how big that lettering or wording was that said we do not ask anyone to cease work? A. I'd say the lettering was approximately a half inch to three quarters high. Half inch, more closer to a half inch.

Q. What was the size of the IAM? A. I'd say IAM was an inch to an inch and a half long letter, approximately.

122 Q. How about on strike? A. On strike was the largest lettering, I believe, approximately three inches, I believe, or maybe more.

Q. Was there anything on the picket sign that indicated who they were on strike against? A. No, sir.

Q. Was there anything on the picket sign that indicated why they were on strike? A. No, sir.

Mr. Poulton: I have only one copy of this exhibit, I am sorry to say. Would you mark that, please.

(Thereupon, the document above referred to was marked Respondent Machinists' Exhibit No. 1 for identification.)

Further re-cross-examination.

By Mr. Poulton:

Q. I show you what has been marked as Respondent Machinists' Exhibit No. 1. Is this the sign that you were referring to that I showed you in the Federal District Court at the hearing on October 16? A. It looks like it.

Q. Similar size? A. Similar size.

Mr. Poulton: I would like to offer that, now, sir.

123 Trial Examiner: Any objection?

Mr. Poulton: I will identify that later again.

Mr. Pickering: No objection.

Trial Examiner: There being no objection, it is received in evidence.

(The document heretofore marked Respondent Machinists' Exhibit 1 for identification was received in evidence.)

128

Edd C. Foster,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you give your name and address to the reporter, please. A. Edd C. Foster, 820 Southwest 50th, Oklahoma City, Oklahoma.

Q. What is your occupation, Mr. Foster? A. Union representative at this time.

Q. With what union are you connected? A. International Association of Machinists, Local 850.

Q. Local 850 and that is the same union that is the respondent in this case, isn't that correct? A. Yes, sir.

Q. Has been referred to here as Respondent Machinists? A. Yes, sir.

Q. Now, what is your official title? A. Business representative of Local 850 of the International Association of Machinists.

Q. How many business representatives are there in Local 850? A. I am the only one.

By Mr. Pickering:

Q. You are the Mr. Edd C. Foster who is named in the complaint as having made certain statements to employees of carriers here in Oklahoma City, of Santa Fe,

130 Gillette, T. I. M. E., Hall and Lee Way? A. I was named in the complaint.

134 By Mr. Pickering:

Q. All right, Mr. Foster, did you have occasion during the period of the strike from September 15 until the settlement of the strike about October 22 of this year to go to the premises of Santa Fe Trails Transportation Company here in Oklahoma City?

A. Yes, sir.

By Mr. Pickering:

Q. When was the first such time that you went to the premises of Santa Fe Trails from or after September 15? A. It would be on September 17.

Q. September 17? A. Yes, sir.

Q. That would be the second day of the strike? A. It would be the third day, I believe.

135 Q. What did you do first upon arriving at the premises of Santa Fe? A. I let Chapman Williams out of the car, who was in the car with me, and

Q. Were you in your car or someone else's car? A. My car.

Q. What kind of car do you have? A. '52 Méréury Custom.

Q. What color is that car? A. It's a very light tan, I believe, or a cream, almost white; very light color.

Q. Did anyone else accompany you to Santa Fe premises other than Chapman Williams on September 17? A. No, sir.

Q. All right, what did Chapman Williams do after you let him out of the car? A. He went to the American Iron pickup that was backed up to the dock, and he put on a

picket apron and picketed the—in the "U" around the front of the pickup, around the front of the side of the pickup, close proximity, I believe it is, thereof.

136 Q. Mr. Foster, why did you go to the premises of Santa Fe? A. To take Chapman Williams down there to pick up the American Iron pickup.

Q. All right, did you have any other purpose for going down to Santa Fe? A. No, sir, not that day.

Q. On September 17? A. Not that day.

Q. All right, sir. Then why did you go up on the dock of Santa Fe? A. I went up on the dock at Santa Fe to tell the dock steward, if they had one, that the picket was there and only on the American Iron equipment.

Q. What was your purpose in telling the Santa Fe dock steward, if they had one, that the picket was there and on the American Iron truck? A. I didn't see a Santa Fe dock steward.

Q. Well, you stated that was your intention. A. That's right.

Q. Did you intend to tell the Santa Fe dock steward, if they had one, that the picket was there and that it was on the American Iron truck? A. So there would be no misunderstanding whatsoever. We have an agreement with Santa Fe Trails Transportation Company and I didn't want the dock stewards to think that we were on strike against the Santa Fe Trails.

Q. Did you find the Santa Fe dock steward? A. No, sir.

Q. All right, what was your purpose in taking a picket down to the premises of Santa Fe to picket the truck of American Iron? A. Simply, to advertise with the picket on the equipment.

Q. Why did you want to advertise with the picket on the equipment? A. So the people would know.

Q. Why did you want people at Santa Fe to know that you were on strike? A. I wanted everyone involved to know that we were on strike.

Q. In particular why did you want the people of Santa Fe to know that you were on strike at American Iron? A. I don't know as we wanted them in particular more than any other general group.

Q. Why did you want Santa Fe to know, regardless of why you, any comparisons why you might have wanted anyone else to know, why did you want Santa Fe to know you were on strike, the Santa Fe employees, people at Santa Fe? A. I just hadn't given it any thought.

Q. Why? A. I just hadn't given it any thought
138 of why.

Q. Well, you have given some thought enough to take a picket down to Santa Fe, hadn't you? A. Surely.

Q. You hadn't thought why you were taking that picket down there? A. We were putting a picket on the American Iron equipment at its various places to advertise that that company and equipment and all was on a strike.

Q. That company, equipment and all was on strike. Now, how is that equipment on strike? A. Because it is being used as a segment of bargaining unit work.

Q. And this was a mail truck driven by Mr. Bill Hancock, was it not? A. That was at that time not a mail truck.

Q. What was it? A. That was a truck used for hauling materials to and from American Iron and Machine Works and further.

Q. Wasn't that the same truck that was used at American Iron to haul mail to the Post Office?

Mr. Poulton: May I interject, Mr. Feiler, I wish Mr. Pickering would let the witness finish his answer.

Trial Examiner: Did you finish your last answer?

The Witness: No, I didn't.

139 Trial Examiner: All right, pick it up from there.

By Mr. Pickering:

Q. Finish, then, please. A. The work being done at that time was part of our bargaining unit work at American Iron and Machine Works Company. We have a, so to speak, door to door certification at that company. We

represent the employees handling the materials and things like that, but we had at that time other people who were not normally bargaining unit people handling the work, and I wanted the people to know; all people.

Q. And it's your testimony that normally you had people taking freight down to Santa Fe in your bargaining unit; is that your testimony? A. Normally?

Q. Yes, sir. A. If freight was hauled to Santa Fe in any amount such as this it would be bargaining unit work, yes, sir.

Q. Well, is it your testimony that normally freight was hauled to Santa Fe by people in the bargaining unit that you represented at American Iron? A. Normally the freight is hauled from American Iron by Santa Fe, I believe.

Q. It's very rare occasions that anyone or any individual at American Iron whom you represent hauled freight to the docks of Santa Fe here in Oklahoma City, isn't that right?

A. It's a rare occasion, but this was an expanded 140 occasion of that. These were people—

Q. Primarily, Mr. Foster—

Mr. Poulton: Just a minute, Mr. Pickering, let him finish his answer, please.

Trial Examiner: Go ahead.

A. This was an expanded occasion whereby people we do represent, people doing bargaining unit work, were carrying the freight.

By Mr. Pickering:

Q. Now, what occasion are you referring to when you say this was an expanded occasion? A. I am referring that this is not normally hauled in that particular manner and that it was being hauled at that time and any time in the future that that's hauled it will be bargaining unit work whether it's on strike or not.

Q. Have you reached some agreement with American Iron to that effect? A. We don't have to. We are certified.

by the National Labor Relations Board as the bargaining representative of those people.

144 Q. Did you picket at any premises in Oklahoma City that you didn't think were represented by Teamsters? A. I don't know whether we picketed 145 any of them that were not represented or not.

Q. Did you picket the premises of J. H. Rose? A. I don't recall picketing.

Q. J. H. Rose is a non-union place; is it not? A. I don't know; but they cross our picket line rather vividly, I'll put it that way.

Q. And you didn't picket at J. H. Rose, did you? A. No, sir.

Q. Why didn't you picket at J. H. Rose? A. They cross our picket line all the time, the employees of that company.

Q. Why didn't you want to make it known at J. H. Rose that American Iron was on strike? A. J. H. Rose certainly knew it. I think many of his employees had been through our picket line.

151 By Mr. Pickering:

Q. Let me ask you, Mr. Foster, wasn't at least one of the reasons that you placed a picket on the premises of Santa Fe on September 17 and one of the reasons that you wanted to advertise with that picket that you hoped by that action that you would be able to induce the employees of Santa Fe to refuse to handle the freight of American Iron; wasn't that one of your reasons?

A. I hoped they wouldn't get on the truck and do that work, yes, sir.

By Mr. Pickering:

Q. You hoped they wouldn't get on the truck and 152 help unload your freight? A. I hoped they wouldn't yes.

Q. Didn't you also hope that they wouldn't handle the freight once it was placed on the dock if it was placed on the dock? A. I think I could say yes, I hoped they wouldn't.

Q. And didn't you also hope that Santa Fe drivers would refuse to haul that freight? A. I never give it a consideration in relation to that.

Q. Now, Mr. Foster, you stated you called upon the dock. What did you do immediately after you called upon the dock?

Mr. Poulton: May I, before he answers the question, have a qualifying question as to what dock you are talking about.

Mr. Pickering: Santa Fe dock; all of these questions are directed at the September 17 incident at Santa Fe. A. I walked out in the middle of the dock area, warehouse area.

By Mr. Pickering:

Q. What did you do when you got out to the middle of the dock area? A. A fellow came by, I asked him where the dock steward was.

154 Q. How many people said anything to you? A. Oh, possibly, I don't know, possibly one. I think the—possibly the one that told me the dock steward, if I recall properly, if my recollection is correct, he told me the dock steward wasn't there and probably wouldn't be there for 20 minutes or he had been gone for 20 minutes, at least it was 20 or 30 minutes away one way or the other. He told me that. When he did I started to leave and there was another fellow that mentioned something about the freight movement, but I didn't hold a conversation as such, I didn't ask anyone to—not to handle the freight.

Q. You didn't ask anyone not to handle the freight? A. No, sir. I talked with Mr. Smith at the door. I don't remember the initials. I think he's manager there. He came over and introduced himself to me, and there was a small discussion there.

Q. All right, when you weren't able to talk to the dock steward; now, what did you say your purpose was wanting to talk to the dock steward? A. Oh, I wanted—

155 A. I wanted to tell the dock steward that we had a picket on the American Iron truck there.

157 Q. All right, suppose, Mr. Foster, you start in and tell us what you said and what Mr. Smith said on this occasion, September 17.

158 A. As best I recall we were standing in the doorway for the dock area and there was three, I guess you would call them, employees.

By Mr. Pickering:

Q. Wait a minute, wait a minute, I want what you 159 said, what Mr. Smith said. I don't want anything else except what you said and what Mr. Smith said. That's my question. A. Well, Mr. Smith came over to me and I believe he said "My name is Mr. J. H." or J. W. Smith, or something to that effect, and stuck out his hand. I shook hands with him, told him, "My name is Edd Foster, business representative of the Machinists."

I believe he stated also at that time he was the manager. Mr. Smith told me that; without any statement on my part, told me that we'll have to go on and take the freight, or something to that effect, indicating he was going to go on and take it, and I didn't say yes, no, or otherwise in relation to that.

He said, "You are on private property here, picketing private property, and I want you to get off." I didn't answer back, and after, oh, possibly three times him stating you are on private property, get off, something to that effect, why, I told him, "Well, just throw me off."

Trial Examiner: What was that?

The Witness: I told him that I would leave—

Trial Examiner: Go ahead.

The Witness: I told him that I would leave whenever the picket left, that I would leave, take the picket and leave. I did not ask him not to handle the freight. There might have been other minor conversations that I—I mean other words spoken, I don't recall exactly, but he got rather obnoxious with this get off the private property deal, 160 and I—it's possible I could have told him that "You allow the company equipment to come on here, why I see no reason why you shouldn't allow the union to come on here with him." I told him that as soon as the equipment left I'd be gone, take my picket and go.

That was in the presence of, I think, two other management employees that was there with him. They were both dressed up and indicated to be management, one big rather heavy fellow was standing there in close—close to and behind Mr. Smith. They apparently were management employees, not any type bargaining unit employees. There was no one else close that I recall except the American Iron employees were out in the truck. The office employees that were doing our work, bargaining unit work, American Iron bargaining unit work.

Q. Now, you were standing on the dock where dock employees were working, weren't you? A. No, sir.

Q. Where were you standing? A. I was standing on the very edge of the east part of the dock and there was no dock employees close that I recall. That was some distance away from any regular dock employees. Outside of unless the management officials, unless you call Mr. Smith a dock employee, I believe you would class him as a management employee.

166 Q. Now, on this same day that you related you accompanied a picket over to the premises of T. I. M.

E., did you not? A. Yes, I believe we were at T. I. M. E. on the 17th of September, yes, sir.

Q. Was it the same picket? A. Yes, sir:

167 Q. All right; Now, the picket crawled out over there and picketed the truck at T. I. M. E.? A. Yes, sir, he picketed the American Iron pickup.

168 Q. He picketed around the American Iron pickup while it was there at T. I. M. E.? A. Yes.

Q. And that was on T. I. M. E. premises? A. I guess it was T. I. M. E. premises.

Q. It was backed up to the T. I. M. E. dock, wasn't it? A. Backed up to the T. I. M. E. dock.

Q. Now, what did you first do when you got there? A. Drove up and let Chapman Williams out, out of my car.

Q. What did you do next? A. Parked my car.

Q. All right, next? A. Went over to the dock.

Q. All right, just start in and tell us what all you did from the time you got there until you left the T. I. M. E. dock. A. I climbed up on the dock, went in the door, asked a fellow who was apparently working there where the dock steward was. The fellow answered that he was up, I believe, in the office at the time. I went up to the office and I, about that time a fellow came out of the office and I asked him if he was the dock steward. I believe that was the question I asked him, and he told me he was. I told him, "We have a picket on a hot-load of material out here."

Q. You told him you had a picket on what? A. Hot load of material.

169 Q. Hot load of material? A. I think that was probably what it was.

Q. Did you tell him anything else? A. No, sir.

Q. Are those your words that you used? A. I believe, as near as I can recall, those are the exact words.

170 Q. Why did you want this dock steward to know that you had a picket on a hot load? A. I had the picket out there advertising, I wanted him to see it.

Q. You wanted to advertise that you had a picket on a hot load? A. I wanted to advertise that we were on strike against American Iron Machine Works Company. I wanted him to know it. We just so displayed the picket banner and I so told him.

Q. Well, now, one of the reasons that you wanted him to know that was that you hoped that the employees at T. I. M. E. wouldn't handle the American Iron freight, isn't that right? A. Oh, I hoped they wouldn't get in the pickup there and carry it off, I hoped they wouldn't, so to speak, get in behind the picket there and handle the merchandise. I hoped they wouldn't.

Q. Get behind the picket? A. Well, the picket on the truck there, I hoped they wouldn't get in the truck and be handling the stuff.

173 By Mr. Pickering:

Q. Did you have the same purpose in picketing? Now, first, you did picket at T. I. M. E., at Lee Way, at 174 Hall, at Gillette and Santa Fe? A. I did not personally, no.

Q. You carried pickets and American Iron employees who were members of Machinists Union and who were out on strike and acted as pickets, you carried such pickets to these five carriers that I have just named where these different people picketed, isn't that right? A. What carriers did you name, please?

Q. During the time that the people that you represented American Iron were on strike didn't you carry pickets to these various carriers during that period of time? A. I carried a picket to Santa Fe, Gillette, T. I. M. E., Lee Way and Hall, yes, I did that.

Q. And you saw these pickets on these carriers' premises in close proximity to American Iron truck? A. I witnessed it, yes, sir.

Q. On various occasions? A. I wouldn't be so broad as to say various occasions.

Q. Well, there was more than one occasion at each carrier, was there not? A. Not necessarily, no.

Q. Was there any carrier where that only occurred once? A. I don't recall being at the Santa Fe dock over once. I may have been there twice, but I don't recall being there over once—but once.

175 Q. How about the other carriers? A. I was at Lee Way two or three times, something like that, possibly: I'll say numerous times. Would that help?

Q. Now, did you have the same purpose in carrying a picket to these premises and having this picketing done in the manner that you described, as you have stated your purpose was at Santa Fe on September 47? A. Yes, I wanted to advertise that we were on strike.

Q. And you had the same hopes to accomplish the same results by your advertising, isn't that right? A. I wouldn't say same results. I didn't know exactly what results were. I couldn't testify as to results. All I could say is that I think I'd be safe in saying I hoped they didn't get on the American Iron equipment and handle the freight.

177 Q. Didn't you hope by the use of your pickets to cause people to cease doing business with Santa Fe or with American Iron? A. I'd say yes, I didn't want them doing business down there, coming down there crossing the picket line during the strike, sure, I would say that I hoped they didn't.

Q. And you hoped by the use of your pickets out on the premises of these carriers around Oklahoma City to cause people to cease doing business with American Iron at those places where these trucks were at, did you not? A. Any place any time that we picketed the American Iron

or American Iron equipment, which I feel is a part of American Iron, is an integral part of American Iron, I hoped they wouldn't get in the trucks or otherwise handle or do business and do our people's work, certainly I hoped that no one would do our work while we were on strike. We were not fortunate enough, of course, to keep that from happening.

184 Q. Now, Mr. Foster, on the same day you went over to Gillette with this picket, didn't you? A. I think that's correct.

Q. Now, when you got over to Gillette what did you do? A. I went in the—when we got to Gillette I let the picket out and parked my car and the picket went on the equipment, picketing the equipment. I went up on the dock.

Q. You went up on the dock to look for the union steward, I suppose? A. Yes, sir.

Q. What did you want to tell the union steward? A. I was going to tell him I had a picket on that American Iron truck. I was intending to do that.

Q. You wanted to tell him that you had a picket on a hot load? A. I don't know what particular language I used there. I was going to tell him on the American Iron truck.

Q. Did you find the steward? A. No, I think all I found was the foreman.

Q. The foreman? A. Yes, I think that's the foreman that I talked to.

Q. Did you find any dock employees around there? A. I didn't see any.

Q. You didn't see any? A. I don't recall seeing any dock employees. The foreman was sitting down over in a trailer there, sitting down, seemed like to me had his feet cocked up and leaning back in the deal.

Q. How did you know he was a foreman? A. He wasn't working; I'll put it that way.

Q. And you didn't see any dock employees? A. No; I don't recall seeing any dock employees, no.

* * * * * 193 Q. Didn't you go over to D. C. Hall on this occasion? A. Yes, sir, I believe we did. In fact, we did.

Q. Did you talk to anyone when you got over to D. C. Hall? A. I don't recall any conversations except I may have had with Chapman.

Q. You didn't talk to anyone at all at Hall? A. I don't recall any conversation, no, sir.

* * * * * 194 Q. Did anyone else say anything to you at Hall? A. I don't believe they did; not that I recall.

204 Mr. Pickering: Well, we can try that route and I withdraw the offer of the amendment of the complaint at this time as stated to the reporter and amend my bill of particulars in this respect. Under I, bill of particulars, and under Subparagraph a thereof, add at the end of said paragraph a, "On or about September 22 at the Oklahoma City terminal of Hall."

Trial Examiner: Are there any objections to that amendment?

Mr. Poulton: I certainly have an objection, sir. There is no showing by General Counsel that there is a surprise. He had an opportunity to answer my motion for a bill of particulars; he did not include it. I think it is untimely at this time. I think it should be, my motion should be sustained to the amendment.

Trial Examiner: Well, I'll grant it, but only on the basis that this is the last such amendment I will allow either to the complaint or to the bill of particulars unless there's some showing of surprise and also again if the Machinists feel that it needs some time for additional preparation.

I'll be glad to consider that request at the close of the General Counsel's case.

205 Mr. Poulton: Mr. Feiler, I would like the record to show that I except.

Trial Examiner: Yes.

208 Mr. Grayson: If the Trial Examiner please, let me make this statement; the Teamsters admit that we didn't handle the freight. We admit that we told our employees not to handle the freight by virtue of our contract. Nothing that Mr. Foster might have said to Mr. Mitchell would have affected whether we handled the freight or not in one iota. We didn't handle it. We had a contract not to handle it. That's our admission in
209 this hearing here.

214 Q. Now, you did have pickets at three different places that American Iron does business here in Oklahoma City, did you not? A. Well, we had pickets at the pipe yard and pickets at the main plant. We had two, four, six, ten—about ten pickets, I think, at times. Other times it was cut down thinner. Sometimes we only had six pickets on and some other times as many as ten, eight to ten.

Q. The pipe yard is located in what part of Oklahoma City? A. I think that's about Eighth and High, Southwest Eighth and South High.

Q. Southwest? A. Southeast, I am sorry, Southeast Eighth.

Q. And that's in the southeast part of Oklahoma City, is it? A. I don't know whether it's in Oklahoma City or not, whether it's in the city limits or not.

Q. All right. Now— A. It's within the Oklahoma City area.

Q. Where are the other two premises located, what part of Oklahoma City? A. Well, 518 North Indiana, then we have a warehouse, some warehouse facilities across the street.

Q. Where is 518, what part of Oklahoma City is 215 518 North Indiana? A. I'd say West-Central.

Q. That's where this other location is right nearby, is that right, the other location of American Iron is right close to the 518 North Indiana? A. Well, yes, the other one across the street, the warehouse facilities, yes, sir, it's comparatively close, across the street.

Q. Now, this North Indiana, as I understand it, is a through street and traveled by quite a large number of cars. A. Oh, I don't know. I never—the thing is choked up quite a bit. I wouldn't testify as to the amount of traffic on it. It's choked up quite a bit by trucking activity over at the warehouse, this Griffith Warehouse. How much traffic it has on it I just couldn't say. Sometimes you have to wait on the trains there and on those trucks who are going in and out, and there is quite a bit of truck traffic, I guess, around in that area. It's kind of an industrial area.

Q. And it's also residential area? A. Yes.

Q. It is intermingled, isn't that right? A. That's right.

Q. And a large number of people pass there every day, wouldn't you say? A. Oh, I wouldn't say a large number.

There are some people pass there, I presume, every 216 day, most every day at least.

Q. Now, did you maintain the pickets at all three of these premises during the entire period of your strike from September 15 to October 21?

Mr. Poulton: I am going to object to that. I believe we have already stipulated to that fact.

Trial Examiner: Shall we save time and so stipulate?

Mr. Poulton: Yes, we so stipulate to that, sure.

Trial Examiner: That you had pickets at all the three locations during the whole strike?

Mr. Poulton: Yes.

By Mr. Pickering:

Q. Did you have pickets there at all times, at all three places? A. No, sir.

Q. On what occasions didn't you have pickets at all three places? A. Oh, night, during the night, why, we didn't have pickets on some of the stuff across the street from the 518 location.

Q. Did anyone keep you from having pickets there? A. Not that I know of.

* * * * *
218 Mr. Pickering: We were discussing a stipulation. At this time I propose a stipulation between Respondent Machinists and General Counsel that the Respondent Machinists had free and unobstructed access to picket the three premises of American Iron in Oklahoma City during the entire period of time that American Iron was on strike.

* * * * *
219 By Mr. Pickering:

Q. Now, Mr. Foster, did you go to the premises of Lee Way with a picket during the time that American Iron was on strike? A. Yes, sir.

Q. When did you go to Lee Way? A. Oh, I don't remember the dates I was there.

Q. With relation to when the American strike started on September 15 how long after the beginning of the strike? A. In relation to American Iron?

Q. The strike that began on September 15. A. And taking the picket out there in relation to American Iron?

* * * * *
221 Q. But you don't recall talking to any dock employee at Lee Way? A. No, sir, not in relation to American Iron, not during the term of that dispute.

Q. Not during the time that the strike was on at American Iron? A. Not that I recall in any manner. I don't remember any discussion, any conversation whatsoever with him. As far as I know I wasn't on the dock at all during this dispute.

Q. Well, on the first occasion that you took a picket to Lee Way would you start in and tell us what happened from the time you got there until you left. A. I was out there several times and I don't remember on the instance of the first time exactly the movements that I made, but on all occasions, why, I drove in, let the picket out and picked him up at a time, I think probably on one occasion, I don't recall which time it was, why, I got out of 222 the car, went over near the area where they were being picketed.

Q. Did you ever at any time go up on the dock at Lee Way? A. I have been on the dock at Lee Way several times.

Q. Well, during the period of time that American Iron was on strike from September 15 to October 21 of this year? A. I don't recall any being on the dock at all during that time.

Q. Did you make any effort to locate the union steward, dock steward, at Lee Way on any occasion? A. No, sir, not on the occasion of this.

Q. Of this strike? A. Of this strike, no, sir.

Q. Did you tell anyone at Lee Way that you were only picketing the truck of American Iron? A. I don't—I would say no, I don't recall talking to any employees of Lee Way outside of probably our own people out there. I may have told them that we were picketing just the truck and not the—

Q. You didn't tell anyone around the dock? A. I didn't want our boys walking off from Lee Way around there which they would have done if we had put a picket on Lee Way.

Q. You didn't tell anyone who worked around the dock or on the dock that you were only picketing American Iron truck, did you? A: I don't recall telling anyone
223 that, no, sir.

Q. Did you make any effort to tell anyone that? A. No, sir.

225 Q. Now, when you talked with Mr. Smith, was there anyone close to you, sir? A. Yes, sir, there was, yes, sir.

Q. How close were they, sir? A. There was a couple of fellows right behind Mr. Smith, kind of in a row:

Q. About how far in feet, if you can approximate it? A. I would estimate that they were kind of lined up a couple of foot apart there, something like that.

Q. How far? A. A couple of foot apart, a couple 226 of foot in between them and kind of lined up.

Q. How far were they from you and Mr. Smith? A. Well, the first one was about a couple of foot behind Mr. Smith and the next one was a little bit behind him and a little bit off to the side kind of like.

Q. Could you give me a description of these people, sir? A. Oh, not a good description, not necessarily a good description. I didn't pay much attention to them. The fellow immediately behind Mr. Smith had on, seemed like, dark trousers, dress trousers, was rather heavy, I would say over 200 pounds, in the neighborhood of five foot eight, nine.

Q. And the other gentleman, sir? A. I couldn't even describe him to any extent

Q. Do you remember, Mr. Foster,— A. They looked like all three management.

Q. I believe that you stated numerous times—I don't want to burden the record with this statement—but would you again please tell me the purpose of your picketing of the American Iron truck at the common carriers' premises, please. A. To advertise that we were on strike, to make

known, to advertise that these people were doing our work, these people driving the truck and all were doing our work as such at that time.

228

William R. Hall,

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified
229 as follows:

Direct examination.

By Mr. Pickering:

Q. Will you state your name and address for the record, please. A. William R. Hall, 4508 Libby, Warr Acres, Oklahoma.

Q. And you are employed at Lee Way, is that right? A. That's correct.

Q. And do you hold some position with the union in connection with your employment at Lee Way? A. I am a steward with Lee Way.

Q. Is that the dock steward? A. That's correct.

Trial Examiner: Teamsters Union, is that?

The Witness: Yes, sir.

By Mr. Pickering:

Q. You are dock steward for Local 886? A. Correct.

Q. The Respondent Teamsters in this case? A. That's correct.

Q. Now, have you had occasion to see pickets on the premises of Lee Way during the period of time from September 15 to October 21 of this year? A. Yes, sir.

Q. Did you ever have any conversation with any of the pickets or anyone accompanying the pickets? A. I did, yes.

230 Q. About when was that, please? A. I'd say around 6:30, 7:00 in the evening, pickup time.

Q. About what day of the month? A. Let's see, it would

be around September, right at the last of September; I couldn't recall the exact date.

Q. All right, do you know the man's name that you talked with? A. No, I don't recall it.

Q. Could you describe the man? A. Yes, I could.

Q. Would you, please. A. The man was about, he's about five feet seven, weighs about a hundred and eighty pounds, rather dark—well, medium complexion, 34 years old.

Mr. Poulton: Pardon me, is that 34?

The Witness: That's just my guess, I mean. The man, I am trying to recall, he was here present before. I identified him before in the previous hearing.

Mr. Pickering: May it be stipulated the man he described in the hearing room in the previous hearing was Bob Pickett, Page 46 of the transcript?

The Witness: Yes, that's correct, that was his name.

Mr. Poulton: I can stipulate that the man he identified at the injunction hearing here in the District Court on October 16 was a man by the name of Bob Pickett.

Trial Examiner: All right.

231 By Mr. Pickering:

Q. All right, what conversation did you have with Mr. Pickett? A. I noticed that the pickets, there were two of them, they were walking around as described before the "U" shape, the pickup truck. I didn't know what it was about and I was rather busy and this fellow came upon the dock and was wanting the steward and I seen him talking to some of the boys there on the dock and they pointed myself out to him and during this time the American Iron had unloaded their freight and set it on the dock. The man came and asked who in the hell was it that signed for those, that freight. I told him that I was sure it wasn't any of the union fellows, that it probably was the Lee Way personnel. He asked me if I recognized a strike. I told him I didn't know, that I wanted to find out about it, it

was all a shock and news to me just to see a picket pop out of the blue.

Then I asked him if he could picket on Lee Way property, that I thought that the picket had to be at the gates of the property and whether he was trespassing private property or not. He asked me if we were—if he was going to handle freight, and I told him as far as I knew once that freight was placed on the dock that we did have to handle it, and that no one advised me though, I mean as far as the strike or anything, what to do about it and I would try to find out and we would work in accordance to whatever was right.

234 Mr. Grayson: If the reporter would, please, mark this as Respondent Teamsters' Exhibit 1.

(Thereupon the document above referred to was marked Respondent Teamsters' Exhibit No. 1, for identification.)

235 Cross-examination.

By Mr. Grayson:

Q. I have a copy of it here also. Mr. Hall, I will hand you what has been marked here as Respondent Teamsters' Exhibit No. 1 and ask you as dock steward for Lee Way and a member of Teamsters Union if you can identify that pamphlet or book that you have in your hand, whatever you want to call it. A. I can, yes.

Q. What is that, Mr. Hall? A. This is our agreement between Local 886 with the Lee Way Freight Lines.

Mr. Grayson: All right, sir, we offer this in evidence at this time.

Trial Examiner: Is there any objection?

Mr. Pickering: Yes, Mr. Examiner, I object to going into a matter of any contract that Teamsters might have with Lee Way. It's improper on cross-examination. If the respondent wants to raise some contract as defense in this matter he will have an opportunity to do so when he

presents his case, but it is improper to do that on cross-examination of my witness.

Trial Examiner: Well, the defensive contract has already been raised in the Teamsters' answer, and I agree with you that the objection to introducing the matter at this time can be raised, it's just a question of if you want to let it in more or less as time saving. If you want to press your objection, the man will have to come back when the Teamster puts on his case. If you want to press your objection I will sustain it.

236 Mr. Grayson: My only point in introducing this is I just want to ask him one question about it. Otherwise I am going to have to bring him back at a later date and I am just trying to save time.

Mr. Pickering: I will not object to introduction of the document; in fact, I would stipulate with the Respondent Teamsters that they have such a contract. However, I do not want to go into matters of his defense on cross-examination of my witness.

Trial Examiner: Well, if we stipulate to that now, are you willing to stipulate to that now?

Mr. Pickering: I will on condition that there's no questions to be allowed upon the basis of this contract at this time.

Mr. Grayson: The only questions which I will ask about this contract will be proper cross-examination, in other words, there are certain allegations that have been made against the Teamsters and—

Trial Examiner: Well, I think that the act actually has gone into handling practices sufficiently, perhaps warranting some of this matter coming in now, it isn't prejudicial either way; and I will at least let the contract come in now. Is there any objection to this Exhibit 1?

Mr. Poulton: Respondent Teamsters have no objection.

Mr. Pickering: I have no objection to it.

237 Trial Examiner: All right, there being none, it is received in evidence.

(The document heretofore marked Respondent Teamsters' Exhibit No. 1 for identification was received in evidence.)

239 By Mr. Poulton:

Q. Is this the way I understand your testimony, if I am not stating it correct please correct me, that on September 18, approximately September 18, you talked with Mr. Bob Pickett on the dock at Lee Way? A. Correct.

Q. And exactly what did you say to Mr. Pickett and exactly what did Mr. Pickett say to you? A. Mr. Pickett wanted to know who in the hell had signed for the freight, the truck had left, had pulled out, but Mr. Pickett was trying to find out who had signed for this freight. He had talked to a couple of boys in the hold next to me, one of them says no, there's the steward there, talk to 240 him, so he asked me who had signed for the freight.

I told him I didn't know, that I am sure it was not a union man. He says, "Do you recognize our picket?" I told him I thought so but I didn't know for sure because I was surprised there was a picket even there. It was all news.

He asked me what were we going to do about it in the future, whether he was going to handle the freight or what we was going to do. I told him I would try to find out and we would do what was right and in accordance.

Q. Did he ever ask you not to handle the freight? A. He said we shouldn't. He didn't tell me not to. He said we shouldn't.

Q. What words did he use when he told you that? A. He said we shouldn't and then there was a story related about some truck driver who had taken some freight and had

got up to some little town and discovered the American Iron on it and turned around and came back.

242 Q. I will withdraw that and reword it. The picket walking around the American Iron truck had no effect on the unloading of the other truck, did it? A. Except for the turmoil, wanting to know what was coming off. Q. But they still continued to unload the other trucks, isn't that right? A. Yes.

245

Thomas D. Armstrong.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you give your full name and address for the record, please. A. Thomas D. Armstrong, 3240 North-West Eleventh, Oklahoma City.

Q. You are the dock foreman here at T. I. M. E. in Oklahoma City, isn't that right? A. Yes.

Q. Did you have an occasion on or about the last of this year to talk to the T. I. M. E. dock steward, Roy McGilliard? A. Yes.

Q. Would you tell us, please, what this conversation was that you had with Roy McGilliard, what you said and what he said. A. Well, it came about due to the fact the night, the previous night we were going to load out some American Iron freight that had been brought to the dock, and the assistant dock foreman and I had been loading the freight out ourselves rather than ask the union employees to handle it, and the previous night before we talked to the steward, the assistant dock foreman had intended to load out the freight on the road trailer and the boss told him that due to the union contract he was not allowed to handle

246 freight, so he in turn called Mr. Chamblin, terminal manager down there, and he told him, told the assistant dock foreman to specify one man to load the freight and if he refused to call him. So he picked out one man and asked him to load the freight. Of course, he refused saying the steward told him he would be fined \$65 if he handled the freight. So the next day we called the union steward; Roy McGilliard, in to talk to him about the situation and he said that Mr. Mitchell had told him that none of the union employees should handle freight, and so we asked him to try to find out definitely whether we were not supposed to handle it at all, whether either I or the assistant dock foreman could load it or whether we just didn't handle it period, so he said he would try to find out, so the next morning he came in and told me that he had called Mr. Mitchell and that he didn't get any definite answer and told him to work it out as best we could and not cause any more confusion than was necessary.

So either myself or the assistant dock foreman continued loading out American Iron freight.

248 Cross-examination.

By Mr. Grayson:

Q. Mr. Armstrong, if I understand you correctly, I believe you—Was it you or the assistant foreman that called the terminal manager and he told you to designate one man to handle this freight; was it you or the assistant? A. That was the assistant.

249 Q. Assistant foreman? A. Yes, sir.

Q. And the assistant foreman did that, is that right? A. Yes.

Q. Do you recall the name of this employee who was designated to handle the freight? A. Yes.

Q. What was his name? A. Bobby Brown.

Q. Bobby Brown? A. Yes.

Q. And I believe you testified that Bobby Brown refused to handle the freight after he was designated to do so?
 A. That's right.

Q. Now, I did not understand clearly, Mr. Armstrong, what you said that Bobby Brown stated his reasons for not handling it. Would you repeat that, please. A. He said that the union steward told him that he would be fined \$65 by the union if he handled the unfair freight, and he says, "I can't afford a \$65 fine."

252 Trial Examiner: We have had testimony as regards this Teamsters' contract that so far Lee Way and T. I. M. E. were parties to it. How about the other three carriers mentioned here, were they covered by it?

Mr. Grayson: Sir?

Trial Examiner: We have had testimony that Lee Way and T. I. M. E. were parties to this contract. How about the other three carriers, were they bound by it?

Mr. Grayson: I think we can stipulate that all of these carriers mentioned here have a contract with Local 253 Teamsters 886 just like this.

Trial Examiner: Is that agreed to?

Mr. Pickering: General Counsel will stipulate that the five carriers mentioned in the Teamsters' complaint each have a contract with the Respondent Teamsters, which contract is the same as the exhibit, Respondent Teamsters' Exhibit 1.

Trial Examiner: All right.

Mr. Poulton: That's all right.

Leon Berrong.

a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows:

Direct examination.

• By Mr. Pickering:

Q. Would you give your full name and address to the reporter, please. A. Leon Barrong, B-e-r-r-o-n-g, 2768 Northwest Eighteenth, Oklahoma City.

Q. Now, you are the district manager for Gillette Motor Transport in Oklahoma City, is that correct? A. That's right.

Q. There has been testimony here that there was on occasions picketing by Respondent Machinists at the premises of Gillette here in Oklahoma City. Now, would you state whether or not your employees have handled the freight of American Iron during the period of time from September 15 to October 21 of this year? A. I can state personally that they handled it one night. The rest of the time I wasn't there.

Q. They handled it one night, you say? A. Yes.

Q. Was there any time that they refused to handle American Iron freight? A. All I can say is what was told to me by my dock foreman.

Q. When was that? A. When was that?

Q. Yes. A. I don't recall the date. There was one night that they didn't want to handle the freight.

Q. Did you have a conversation with the dock steward concerning that incident? A. No, not that incident.

Q. Did you have a conversation with Mr. Mitchell concerning that incident? A. Yes, I did.

255 Q. That is Mr. Ralph Mitchell who is the business agent of the Teamsters Union? A. Yes, sir.

Q. Now, could you state whether or not that was about the 5th or 6th of October of this year when that conversation occurred? A. It was around that time. Now, I might correct that there that I had a discussion with the dock foreman, my dock foreman—steward, I mean, at the same time I had a discussion with Mr. Mitchell, together, jointly.

Q. Was anyone else present other than the dock steward, Mr. Mitchell and yourself? A. No, sir..

Q. What is your dock steward's name, please? A. Robert Hawkins.

Q. Where did this conversation take place? A. In my office.

Q. At Gillette? A. Yes.

Q. Would you tell us, please, what all was said during the course of this conversation? A. Well, I called Mr. Mitchell over to my office and wanted to get the question cleared up whether or not it was the freight was fair or unfair, or whether the boys should handle it or not. He would not declare the freight the American Iron freight, fair or he would not declare it unfair.

256. Q. First, where was Mr. Mitchell? You state you called him over to your office. A. He was over at the Makin Transportation. I was over there and called him over.

Q. Across the street from your place of business? A. Right.

Q. All right. Go on and tell us as well as you can remember what you said and what Mr. Mitchell said and what Mr. Hawkins said. A. Well, I tried to get some statement out of Mr. Mitchell as to whether or not it was fair or unfair freight. He would not declare it fair or he would not declare it unfair. He would not tell the boys not to handle it or he would not tell them to handle it. He just referred us to Article 4 of the contract.

Q. What were your words to Mr. Mitchell; what was your question to Mr. Mitchell, the best you remember your words? A. Well, the question was after the freight was placed on our dock whether it was still unfair freight.

Q. What did Mr. Mitchell say, what were his words? A. He would say nothing only refer me to Article 4 of the contract.

Q. Now, as I understand your testimony, Mr. Berrong, you asked Mr. Mitchell whether or not American Iron freight was unfair when it was brought to your dock, is that right? A. That's right.

Q. And you state that he would not tell you whether it was fair or unfair but would just tell you to see Article 4 of your contract, is that correct? A. That's right.

257 Q. Did Mr. Mitchell or any other representative of the Teamsters Union ever tell you or to your knowledge any other member of management at Gillette whether or not the freight from American Iron was unfair? A. No, sir, not to my knowledge.

Q. What was the past practice with respect to informing you or not informing you as to what freight is considered unfair by the Teamsters Union? A. Well, in the past it's been some time back, I could not say for sure whether it was on business firms or whether it was on other freight lines, they would call us and tell us they were having labor trouble, but I do know they did on the other freight lines.

Q. Were you ever notified by the Teamsters Union, either orally, by telephone, in person or in any written manner, whether or not American Iron freight was unfair? A. No, sir.

Q. Were you ever notified by the Teamsters Union that American Iron had a strike? A. No, sir.

Q. Was there any occasion after this conversation with Mr. Mitchell when the employees of Gillette refused 258 to handle freight from American Iron? A. Once, I talked with him on the telephone. That was all.

Q. You talked with who, Mr. Mitchell? A. Mr. Mitchell, yes.

Q. I don't believe you understood my question, Mr. Berrong. The question was did the employees at Gillette refuse to handle American Iron freight on any occasion after this conversation you had with Mr. Mitchell? A. Well, not to me, they may have to my dock foreman. He would have to answer that.

Q. Well, to the best of your knowledge was there any refusal to handle freight on the part of your employees after this conversation? A. Yes, according to my dock foreman they did.

Q. What did your dock foreman refer to you? A. He reported they would not sign for the freight or they would not load it after it was placed on the dock by the American Iron employees.

Q. Did you ever have occasion yourself to instruct your employees to handle American Iron freight? A. One time.

Q. When was that, sir? A. I can't give you.

Q. With relation to this conversation you had with Mitchell. A. I don't recall whether it was prior to 259 the conversation or after the conversation.

Q. How long was it, relatively close either before or after that conversation? A. Yes, sir, in there about the same time.

Q. Would you describe that occasion to us, please, what you said, what happened. A. Well, the American Iron pickup truck came up to the dock and I asked each one of the employees individually if they wanted to sign for the freight, and each one of them refused and then the dock foreman signed for it, so then I started down the same routine to see who wanted to load it, and one of the boys went to a telephone and called someone and came back and said, "Yes, we'll load it." They went ahead and loaded it.

Q. What was it you told the employees? A. What I told them?

Q. Yes, what were your words to these employees? A. I asked them if they wanted to sign for it, then I asked them if they wanted to load it.

Trial Examiner: Unload it?

The Witness: Load it, load it after it was already on the dock.

By Mr. Pickering:

Q. And then they told you or they refused to, is that right? A. No, no.

Q. What was it? A. They refused to sign for it, 260 after American Iron had placed it on the dock they refused to sign for it, then I started down the line

asking them who wanted to load it on our trailer leaving town, and then one of the boys went to the telephone, used it, came back and said, "Yes, we'll load it."

Q. What did they tell you, though, when you asked them, "Does anyone want to load this freight?" Did they tell you anything when you asked them that? A. No, no, they just said just a minute.

Q. Did the employee tell you who he was calling or who he did call? A. No, he didn't.

Q. Now, did you make any statement on that occasion as to whether or not Gillette was going to move the American Iron freight? A. Did I make any statement at that time?

Q. Yes, sir. A. I don't recall exactly, unless I made the statement after it was placed on our dock, I did not think it was unfair freight and according to the Interstate Commerce Commission we had to handle the freight.

Q. Well, did you tell the employees that? A. Yes, sir, yes, I told them that.

Q. And after this phone call was made by this employee did you state whether or not the employees handled 261 the freight? A. Yes, they did.

Q. Did they continue to handle American Iron freight after that occasion, to the best of your knowledge? A. No, I think they refused it later on.

Q. Do you recall approximately when that was? A. Oh, I believe it was the next day or the following day after the first hearing.

* * * * *

Cross-examination.

* * * * *

264 By Mr. Grayson:

Q. You testified, I believe, that Mr. Mitchell would not tell you whether or not these were unfair goods, is that right? A. That's right.

Q. Is there any provision in the contract as to who is to determine whether or not goods are unfair in an occasion

like this? A. Well, he would not determine the company was fair or unfair either.

Q. I know, but was it any more his obligation than it was yours to make such a determination? Both of you were parties to the contract, would one of you be more obligated to make a statement as to whether they were or not? A. What I wanted to determine was what was unfair merchandise coming from a company.

274 Mr. Pickering: At this time, Mr. Examiner, I have two or three stipulations I would like to propose. It is stipulated by and between counsel for Machinists and General Counsel that the Teamsters Union, the respondent in this case, represents the dock employees at the five carriers, named in the complaint in both cases.

Do you stipulate to that?

Mr. Poulton: We will so stipulate.

Mr. Pickering: I now propose a stipulation by and between counsel for the Teamsters Union and counsel for the General Counsel that two Santa Fe drivers who refused to haul American Iron freight are members of Wichita, Kansas, local and are not members of the Respondent Teamsters local and that these two Santa Fe drivers, Nebergall and Greenstreet, are covered by a contract to which the Oklahoma City Local is not a party but rather is a contract between the Wichita Local and the Santa Fe Company.

Trial Examiner: Is that so stipulated?

Mr. Grayson: Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pickering: It is also agreed and understood 275 by and between counsel for the Teamsters and counsel for the General Counsel that the contract re-

ferred to as being a contract between the Wichita Teamsters Local and Santa Fe is the contract commonly known as Central States Area Agreement.

It is further stipulated that the contract between Santa Fe and the Wichita Teamsters Local has a clause known as Article 9; which reads as follows:

"It shall not be a violation of this contract and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a union or refuse to handle unfair goods, nor shall the exercise of any rights permitted by law be a violation of this contract.

"Then term 'unfair goods' as used in this article includes but is not limited to any goods or equipment transported, interchanged, handled or used by any carrier, whether party to this agreement or not, at whose terminal or terminals or place or places of business there is a controversy between such carrier or its employees, on the one hand, and a labor union on the other hand, and such goods or equipment shall continue to be 'unfair' while being transported, handled or used by interchanging or succeeding carriers, whether party to this agreement or not, until such controversy is settled.

"The union agrees that in the event the employer becomes involved in a controversy with any other union the union will do all in its power to help effect a fair settlement. It is understood that in the event the decision of the National Labor Relations Board in the

Company Case is sustained or prevails on appeal to the higher Federal Courts this article will be renegotiated and rewritten to provide the union with a maximum of protection afforded by such decision."

Mr. Poulton: Off the record.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Grayson: I will stipulate to it.

Mr. Poulton: The Machinists will not stipulate to it, sir.

Trial Examiner: Well, all right.

Mr. Pickering: Can you stipulate to any part of it?

Mr. Poulton: No.

Trial Examiner: I think as far as the prior stipulation about the Teamsters representing the dock employees with the five carriers, the Teamsters will enter into that stipulation, too, is that right, as regards the prior stipulation that the Teamsters represented the dock employees at the five carriers, Teamsters would enter into that stipulation, too, I take it?

Mr. Grayson: That we represented the dock employees at the five carriers, yes, sir.

Trial Examiner: Now, on the stipulation we have got agreement between the General Counsel and the Teamsters, and the Machinists show some sort of dissent or at 277 least not entering into it, is that right?

Mr. Poulton: That's correct.

Trial Examiner: Where does this stipulation enter into the case, then, if you want to tell me that now, and is there some problem that we have to face now in view of that?

Mr. Pickering: Not at this point. However, inasmuch as the Machinists raise an objection to the stipulation, it may be necessary to have some testimony and introduce the contract itself.

Mr. Poulton: I think you are going to have to, sir.

Trial Examiner: I think you'd stipulate that the Central States Agreement, to which the Machinists is not a party, Mr. Poulton, at least has the clause in it that was read?

Mr. Poulton: Yes, sir, I will stipulate to that.

Trial Examiner: So you don't have to have proof of the contracts.

Mr. Poulton: No, I will stipulate it as the clause.

Trial Examiner: It's just the other matters that you have some questions on?

Mr. Poulton: That's right.

Trial Examiner: Where does this enter into the case, Mr. Pickering?

Mr. Pickering: There will be testimony later on that.

Trial Examiner: All right, we'll have to take it from there, then.

Mr. Poulton: May we go off the record a minute?

278 Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Poulton: After due consideration and brow beating by the General Counsel the Machinists will stipulate to the prior stipulation.

294

William B. Jones.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Mr. Pickering: Mr. Examiner, before we get into the examination of this witness I have one further stipulation.

It is stipulated by and between counsel for the Respondent Teamsters and counsel for the General Counsel that on or about October 11 or 12 the dock stewards and dock employees of the five carriers named in the complaint were told by the Respondent Teamsters Union to handle American Iron freight brought to the respective docks if the Machinists' pickets were not present with the American Iron truck and picketing around the American Iron truck, and that after such instructions the dock employees at the five respective carriers did handle American Iron freight until after October 16 of this year.

295 Mr. Grayson: I'll stipulate to that.

Mr. Poulton: May we go off the record just a moment?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Poulton: I will stipulate to that.

300 Trial Examiner: I think you people, as I understand it off the record, arrived at some stipulation. I think you are in agreement that this was a non-union freight handler or freight carrier, this Rose Company, and I think further you people are ready to stipulate that the Machinists did not do any picketing on those premises, is that right?

Mr. Poulton: That's right.

Trial Examiner: Whether or not the company made delivery is up to them to specify.

Mr. Poulton: I assume that the American Iron trucks went to J. H. Rose. I assume that. I will stipulate to that. May I ask, General Counsel has not said he would stipulate to those facts or he wouldn't stipulate to them.

Mr. Pickering: I'll stipulate to that.

Trial Examiner: All right, there are three things in the stipulation, first, that it was a non-union carrier, J. H. Rose; second, that the Machinists did not picket at J. H. Rose; and third, that the company did make some deliveries there, is that right, gentlemen?

Mr. Poulton: That's correct.

Mr. Pickering: It is understood and stipulated by counsel for General Counsel.

313

Bobbie L. Wilkerson.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you give your full name and address to the reporter, please. A. Bobbie L. Wilkerson, 10 Northwest Thirty-first.

Q. Where are you employed, Mr. Wilkerson? A.

314 D. C. Hall Transportation Company.

Q. In what capacity are you employed? A. Checker foreman.

Q. Are you also the dock steward for Teamsters' Local 886? A. Yes, sir.

Q. Do you have any authority to hire and fire people? A. No, sir.

Mr. Pickering: May it be stipulated that Mr. Wilkerson is not a supervisor within the meaning of the Act?

Mr. Grayson: Yes, sir.

Mr. Poulton: I'll stipulate.

By Mr. Pickering:

Q. Mr. Wilkerson, I direct your attention to a period of time about the middle of September of this year and ask you if there was an occasion—when was the first occasion around that time that American Iron truck came to D. C. Hall's dock and was picketed and a picket picketed around the truck? A. I wasn't present at the first occasion.

Q. When was the first occasion when you were present? A. I am not exactly sure of the date; I think it's in the statement.

Q. Approximately when?: A. It would be around the 16th, 15th of September, I imagine. I am not sure.

Q. All right, would you tell us what happened on 315 that occasion, please? A. The American Iron driver backed up to the dock and started setting the freight off the dock. I walked up to the back of the truck and the Machinists' picket with the sign on; the banner, was walking around the truck in a "U" shape from the dock to the front of the truck and around. I looked at the picket and I looked at the sign that was on it, paid special attention to the two words "on strike" and I told the driver, I says, "We can't accept your freight," I says, "we can accept it but it won't go out," and the driver turned around and said something to the boy on the truck with him and went in the office and used the telephone.

He, said, maybe ten minutes he come back and put the freight back on the pickup, said, "We'll take it to J. H. Rose and we'll straighten out this mess."

Q. All right, sir, how long after or were you told of an occasion before this when a picket came— A. Yes, sir.

Q. —to D. C. Hall premises. Approximately how long from the first occasion that a picket came to the D. C. Hall premises was this when you observed the picket at the Hall premises? A. To the best of my knowledge that first occasion was on Friday, and I believe this occasion where I was present took place on Monday or Tuesday.

Q. Of the next week? A. Yes, sir.

316 Q. Do you know whether or not the dock employees handled the freight on the preceding Friday? A. Yes, sir, they did.

Q. On the day that you have related that you saw a picket at the Hall premises when an American Fron-truck was present, did you have an occasion on that day to have a conversation with Mr. Ralph Mitchell, the Teamsters' business agent? A. I did.

Q. Where was this conversation at that time, please? A. On the dock at D. C. Hall.

Q. Was anyone else present other than you and Mr. Mitchell? A. Not on the dock.

Q. Would you tell us, please, what was said between you and Mr. Mitchell?

Mr. Poulton: Before you go into that, Mr. Feiler, I would like to ask the General Counsel to establish the date that this took place.

Trial Examiner: The witness has testified this was on the date of that incident that he first witnesses the picketing. Isn't that right?

The Witness: Yes, sir.

Mr. Poulton: It was on a Friday.

Trial Examiner: No.

Mr. Pickering: It was the first time he witnessed the picket present.

317 The Witness: Mr. Mitchell came out on the dock and asked me if we had been handling freight for American Iron, and I told him they had on one occasion, and he presented a copy of the contract and showed it to me, pointing out Section (b) of Article 4, and he said, "It is a violation of our contract to handle the freight." So I told him that was fine, I would inform the dock employees of this violation and it wouldn't happen any more.

By Mr. Pickering:

Q. Well, did he say anything to you about the dock employees having handled the American Iron freight previous to this? A. No, sir, he asked me if they had handled it and I told him they had.

Q. Is that the time when you were told it was a violation of your contract? A. Yes, sir.

Q. All right, sir. Did he say anything to you about what could be done if you did handle it? A. He said that a person could lose his book, which is a phrase we used on the freight dock among the drivers and dock men that you are brought before the board and charge is filed against you, but I have inquired about that statement and it's been explained to me that you cannot lose your book because it's your own personal property, that if you are charged with a violation of the contract you are tried before the board and if you are found guilty they refuse to accept your dues, an unfit union member.

319 Q. All right, sir. After you had the conversation with Mr. Mitchell did you make any statement relating to that conversation to the dock employees? A. I informed the dock employees that it was a violation of our contract to handle the freight and that they could lose their book if they did.

Q. Now, this book you are referring to is your union book, is that correct? A. Yes, sir.

Q. Do you remember the words you told them in
320 regard to they could lose their book? A. No, sir.

I think I told them that it being a violation of the contract they could be brought before the board and tried for the violation and consequently lose their book and consequently lose their job, but I am not exactly sure of the exact words.

Q. Did the management of D. C. Hall, any person of management, ever make any statement to you as to whether or not they desired to accept the American Iron freight?

A. Yes, sir.

Q. Who made such a statement to you? A. Well, first, the solicitor, George Dowdy, and the assistant to the president, Dan Murrell, and present terminal manager, Claude Lowe.

Q. What was their desire with respect to handling or not handling the American Iron freight? A. Their desire was to handle the freight, the man told me that's what we are in business for, and I told him that—

Q. Who is that who told you that? A. Dan Murrell and Mr. Lowe both.

Q. All right. A. I told him that under the present condition that it being in violation of the contract, that I couldn't do it, and it went on from there, various arguments about it. They told me, "Well, other lines are handling it," and I told them, "Well, I am not concerned with other freight lines, I am concerned with D. C. Hall and my job is checker foreman and dock steward for the union."

321. Q. Now, were you present in the hearing here held on October 16 before Judge Wallace? A. Yes, sir.

Q. —in this matter. All right. Could you tell us, please, whether or not you had any conversation with Mr. Mitchell after that hearing with relation to handling or not handling American Iron freight? A. Yes, sir, I did.

Q. What was that conversation, please? A. He informed me that the hot cargo clause in the contract had been upheld and that it was a violation of the contract and not to accept the freight.

Q. Did he tell you to handle the freight under any circumstances? A. Not after the hearing on the 16th.

Q. What did he tell you in that regard? A. Not to handle the freight.

Q. Under any circumstances? A. As long as American Iron was on strike.

Q. Did D. C. Hall's dock employees handle the freight after this occasion that you have related when you told the employees they could get their book—they could lose their book? A. No, sir.

Q. The date of that occasion of your conversation with Mr. Mitchell and the same day that you saw the picket come down with the American Iron truck, could that have been on the 22nd of September, which was the Wednesday following the previous Friday? A. It could have been, sir; I am not sure of the date.

Q. Was it about that time, about the following Wednesday? A. It was either Tuesday or Wednesday.

Mr. Pickering: That's all.

Cross-examination.

By Mr. Grayson: }

Q. Mr. Wilkerson, in Paragraph 22 of the complaint filed by the counsel for the General Counsel against the Respondent Teamsters it alleges that "since on or about September 16, 1954, Respondent Teamsters, by and through its agents, Ralph Mitchell and Bobbie L. Wilkerson, Hall dock steward, has by oral instructions, threats and appeals induced and encouraged Hall dock employees to refuse to receive, check or otherwise handle American Iron freight."

I'll ask you whether or not at any time since September 16, 1954, did you make any threats to any of the employees of the D. C. Hall Transportation Company to cause them not to handle the freight? A. No, sir, I did not threaten anybody. I merely informed them that according to our contract it was a violation of the contract to handle the

freight, and as business agent of the union Mr. Mitchell is the only person who interprets the contract for the dock stewards at the various truck lines.

329

Claude Lowe.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you give your full name and address to the reporter, please. A. Claude Lowe, 1424 Northeast Nineteenth, Oklahoma City.

Q. What is your occupation, Mr. Loew? A. Terminal manager for D. C. Hall Transportation Company, Oklahoma City.

331

By Mr. Pickering:

Q. Did you ever have occasion to ask D. C. Hall employees to sign for American Iron freight? A. Yes, sir.

Q. How many employees did you ask to sign for American Iron freight? A. Two.

Q. Approximately when was that, please? A. I couldn't give you the date, sir. I couldn't even begin to give you the date. It was somewhere—it seems to me like the first time I asked them was the first time they brought a shipment to us while we was on strike, which I think was

332 on Friday.

Q. Were you ever notified in any manner by the Teamsters Union that American Iron and Machine Works Company was an unfair company? A. No, sir.

Q. Did the Teamsters Union ever notify you in any manner that the freight brought to D. C. Hall dock was goods or freight from an unfair company? A. No, sir.

Q. Now, on this occasion that you asked two employees to sign for American Iron freight, what did these employees tell you? A. Well, the first one that I asked to sign for the freight did sign for it and loaded it.

Q: On the first occasion? A. Yes, sir.

Q. Did you have an occasion after that? A. Yes, sir.

Q. When was that? A. A few days later, two or three days later, they brought some more freight to the dock and the employees set it off on the dock and wanted to know if it would go out tonight, and I told them no, it wouldn't go out because the boys had refused to sign the bills or even load the freight, and that was—the conversation was with Mr. Wilkerson, the checker foreman, and American Iron.

Trial Examiner: You mean Wilkerson told you 333 that, is that your testimony?

The Witness: No, I had asked Wilkerson to, on the other occasion, I had asked Wilkerson if he would sign the freight and handle it and he said no, we couldn't handle it. When American Iron brought this next freight to the dock, I informed them that it wouldn't go out.

By Mr. Pickering:

Q. Now, approximately how long after this first occasion that you have related where you asked some employee to sign for the freight and he did, was it when the American Iron freight was brought to the dock and this conversation was had where you told him or the American Iron driver that the freight wouldn't go out? A. I don't remember the dates. I'd say it was a few days, three or four or five days after the first.

Q. After the first occasion? A. Yes, sir.

Q. Could that have been about the 4th or 5th of October? A. Well, it could have been.

Q. Do you remember an occasion when I came to your office first, the first occasion when I came to your office to talk with you concerning this matter? A. Yes, sir.

Q. Do you remember whether or not that was before or

after the occasion that I first came to your office to talk with you? A. Your first trip to my office?

334 Q. Yes, sir. A. It was before.

Q. Approximately how many days before? A. I'd say maybe a week.

Q. Do you know what the position of D. C. Hall was as to whether or not they desired to handle the American Iron freight while American Iron employees were on strike?

A. It was the desire of the company to handle the freight.

Q. Did you make that known to either Mr. Wilkerson, the dock steward or the dock employees? A. Yes, sir. It was my desire also and I asked the steward if he seen any way he could handle that freight and he said he could not.

* * * * *
Cross-examination:

By Mr. Grayson:

336 Q. Now, I understand, Mr. Lowe, that you asked your employees to handle the freight for American Iron, is that correct, sir? A. Yes, sir.

Q. And you personally asked them? A. Yes, sir, I did, the night checker.

Q. Did the employees refuse to handle the freight? A. No, sir.

Q. They didn't refuse to handle it? A. No, sir.

Q. You mean they handled the American Iron freight? A. Yes, sir, that was on the first occasion.

Q. On the first occasion? A. Yes, sir.

Q. Did you ask them on any other occasion to handle the American Iron freight? A. Yes, sir.

337 Q. Did they handle it then? A. No, sir.

* * * * *

Clifford M. Troxel.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Give your full name and address to the reporter, please. A. Clifford M. Troxel, Route 11, Box 291F, Oklahoma City.

Q. And you are employed at Santa Fe Trail Transportation Company here in Oklahoma City, is that correct? A. Yes, sir.

Q. What is your capacity with that company? A. Pickup and delivery driver.

Q. Are you, in connection with your job at Santa Fe, also the dock steward for Teamsters Local 886? A. Yes, sir.

Q. Were you such a dock steward at Santa Fe during the months of September and October of this year? A. Yes, sir.

343 By Mr. Pickering:

Q. Mr. Troxel, how did you first learn of the American Iron strike? A. By seeing the pickets in front of the place of business.

Q. In front of American Iron's place of business? A. Yes, sir.

Q. Did you ever, on any occasion that you saw pickets in front of American Iron's place of business, have any conversation with anyone there? A. Yes, I talked to one of the boys, oh, a couple of days after they went out on strike.

344 Q. Where did you have this conversation? A. Across the street from American Iron property on Indiana and Fifth Street.

Q. Did you know the name of the person that you talked with there? A. No, sir.

Q. Did this person identify himself in any way to you? A. Only a strike captain.

Q. As what? A. A picket captain or something.

Q. Could you describe this person for us, please? A. Well, let's see, he was, oh, about five feet ten inches tall, weighed around a hundred eighty pounds, black headed, I believe, with a cap.

Q. Could you describe this cap for us, please? A. I don't remember about the color of the cap. I do remember there was a Machinists button on it. That would be all.

Q. All right, was anyone else present at this conversation? A. No, sir.

Q. Would you tell us, please, what your conversation was that you had with this person who identified himself to you as a picket captain? A. Well, we exchanged usual greetings and then I asked him, told him that I had heard that Mr. Foster had been down at the dock looking for the steward and asked him if Mr. Foster was around 345 and he said no.

I asked him if he had any idea of what he might have wanted and he said he didn't. I turned to leave and he says, "Well, I hope you boys observe our picket and help us out." I believe he said not to handle their freight, and I told him I was afraid that would be a secondary boycott.

He told me he didn't think so, and I told him I would reserve opinion on that.

Then I went on about my regular business.

346 By Mr. Poulton:

Q. I don't believe we have established the date that you talked to the man, alleged picket captain, at the American Iron premises. Do you remember what date that was, sir? A. I would say it was about the 17th of September, the start of the strike was on the 15th, I believe it would be about the 17th.

Q. The strike was started on the 15th, that's correct, and you say it was about 17th? A. Yes, sir.

Q. About what time of day was that, sir? A. About around 3:00 o'clock in the afternoon.

Q. Just where was this man standing when you talked to him? A. We were on the southwest corner of the intersection, if that street had been ~~open through east~~, across northwest of the main entrance of the American Iron building.

Q. Did this gentleman have a picket sign on? A. No, sir.

Q. Had you ever seen him before, sir? A. No, sir, I hadn't.

Q. Do you know whether or not he was an employee of American Iron? A. I couldn't swear that he was, no.

Q. Do you know whether he was a member of Local 850, sir? A. I seem to remember that he had a Machinists button on his cap.

347 Q. Was it a button, sir? A. Yes.

Q. What do you mean by a button? A. Oh, a round union dues button or emblem.

Q. Does that mean to you, sir, that he was a member of Local 850? A. Well, that alone wouldn't, no.

Q. It wouldn't? A. No.

Q. Then it is your testimony that you are not sure that he was a member of Local 850, is that correct? A. Well, I couldn't swear definitely he was a member, no.

349 Redirect examination.

By Mr. Pickering:

Q. Now one other question to help establish the date of this. It is my understanding from stipulation of 350 the part of—answer, rather by the Respondent Teamsters in this case that you gave some instructions to employees of Santa Fe not to handle American Iron freight. Now, that is right, isn't it? A. I told the boys that it would be unwise as long as that paragraph, I mean Article 4—

Mr. Grayson: We have stipulated to that. We have admitted it.

352

Further redirect examination.

357

Q. Directing your attention to that occasion about the 20th of October of this year, did you have an occasion to be present with Mr. Hancock, an American Iron driver, and Mr. Adams, who works at Santa Fe? A. Mr. Adams was the only one I recall. I don't know who Mr. Hancock is.

Q. Was another person present? A. In the office, you mean?

Q. Yes, sir. A. There were several men in there. I don't know.

Trial Examiner: Was this date October 20, Counsel?

Mr. Pickering: Yes, sir.

By Mr. Pickering:

Q. Now, was there an American Iron, someone there with an American Iron truck? A. Yes, about 5:30 in the afternoon I should say, something like that.

Q. Was the driver of this American Iron truck present? A. Yes.

Q. Now, who is Mr. Adams? What is his first name or initials? A. Lowell, L. C. is his initials.

Q. And he was dock steward at Santa Fe for 358 Teamsters Local 886, is that correct? A. Yes, sir.

Q. Just start in and tell us what happened upon this occasion. A. Well, this American Iron brought in a shipment—

Trial Examiner: Keep your voice up, please.

A. The American Iron brought a shipment into the dock and he brought it into my office to be blocked for the run which the shipment would go in, and Mr. Adams followed him in the office and said not to block the bill there.

By Mr. Pickering:

Q. Now, do you ordinarily block bills of lading, shipments brought to Santa Fe dock? A. Yes, sir.

Q. Did you at that time ordinarily block bills of lading brought to the Santa Fe dock? A. Yes, sir.

Q. That was part of your job duties at Santa Fe at that time? A. Yes, sir.

Q. Now, at that time were you a dues paying member of the Teamsters Local 886? A. Yes, sir.

Mr. Pickering: May it be stipulated that the job that Mr. Futtrell was working in as dispatcher at Santa Fe on October 20 was a job that was not covered by the Teamsters contract, certification with the Santa Fe Company?

Mr. Grayson: Yes, sir, it may be so stipulated.

359 By Mr. Pickering:

Q. As I understand it, Mr.—

Trial Examiner: As I understand it, now, he was a member of the union but he wasn't occupying a job covered by the existing contract, is that right?

Mr. Grayson: That's right.

Trial Examiner: All right.

Mr. Pickering: In other words, he was not in the bargaining unit represented by the Teamsters Union at Santa Fe.

Mr. Grayson: That's right. For clarification, as I understand it, Mr. Futtrell was a dues paying member of the union at his request. Is that right?

The Witness: Yes, sir.

By Mr. Pickering:

Q. You had made some arrangement with the union and Santa Fe where you could hold this job as a dispatcher and pay your dues in the union for some seniority purpose or something isn't that right? A. Yes, to hold seniority as well.

Q. Did you later that day block the bill of lading for the American Iron shipment that you at that time refused to block? A. No, sir.

369

Loy Oscar Mayo.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Q. Mr. Pickering: It can be stipulated, can it not, that Mr. Mayo, who has just taken the stand, is an employee who acted as a picket for the Machinists Union during the time you were on strike concerned within the complaint?

A. Mr. Poulton: Yes.

Direct examination:

By Mr. Pickering:

Q. Would you give your full name and address for the reporter, please? A. Loy Oscar Mayo, 1633 Northwest 370 Fourth, Oklahoma City.

Q. Now, Mr. Mayo, we understand that you at least on one occasion or so acted as a picket for the Machinists Union at the premises of some carriers here in Oklahoma City. Could you tell us what carriers those were.

A. Just what do you mean? Do you mean the places I went?

Q. Places, yes, sir. A. Well, I went to, just one time is all I went, I went to Gillette and Lee Way, the two places.

Q. All right, sir, and I show you now what has been marked as Respondent Machinists Exhibit 1 and ask you if you ever saw an apron similar to this. A. Have I ever saw one?

Q. Yes. A. Yes, sir.

Q. Was the apron that you wore at the premises of Lee Way, and where was the other place? A. Gillette.

Q. Gillette, similar to this apron? A. Well, they was a whole lot similar to it.

Q. Now, I call your attention to the first line, I. A. of M.; was that on the apron that you wore? A. Yes, I think that's on all of them.

Q. I call your attention to the next line, Machinists, was that on the apron that you wore? A. I imagine it was. It was on all that I seen.

371 All right, sir. I call your attention next to the line that has 850 on it. Was that on the apron that you wore? A. I think it were, to the best I can remember.

Q. I call your attention next to the balance or to the part of the lettering immediately under 850. That states "On Strike;" was that on the apron that you wore? A. That's the way it looks to me.

Q. All right, sir. Next I call your attention to the part just under "On Strike," A. F. of L.; was that on the apron that you wore? A. I think it was. Presume it was.

Q. I call your attention next to the small embroidery on the bottom of this apron, which is, states, "We do not ask anyone to cease work," and ask you whether or not the picket apron that you wore at the premises of Gillette and Lee Way had those words upon the apron? A. I didn't look very close. My eyes didn't fall upon it. It's on some of them that I didn't pay real close attention.

Q. You didn't pay real close attention? A. I didn't pay real close attention to the small writing.

Q. Can you tell us whether or not you saw the words, "We do not ask anyone to cease work," upon the apron that you wore? A. I couldn't say just exactly; I didn't read it.

Q. Pardon? A. I didn't read it. It could have 372 been there and I could have seen the—

Q. I am not asking you, Mr. Mayo, what could have been there. My name might have been there, I don't know, but I will ask you this question; can you state whether or not you saw the words, "We do not ask anyone to cease work," on the apron that you wore? Did you see those words on the apron? That can be answered yes or no. Either you saw it or you didn't.

Mr. Poulton: I object. Let the witness answer the way he wants to.

Trial Examiner: That's all right. You can both develop it. Go ahead. You may answer.

A. The ones that I wore to the plant—

By Mr. Pickering:

Q. Just a minute. A. —was blank.

Q. Pardon? A. The ones I wore to the plant, to the American Iron, I think they were blank. I don't—

Q. Were blank? A. I believe they were.

Q. And didn't have this "We do not ask anyone to cease work" on it? A. There at the plant.

Q. How about the ones you wore at the premises of Lee Way and Gillette? A. I didn't see it on there. If 373 you will—

Q. Did you read—

Mr. Poulton: Let the witness finish his answer, please.

Trial Examiner: Go ahead.

A. The way it were, this was my first occasion, see, to follow the truck, and the aprons were rolled up in the car, and when we got out I carried the apron under my arm till we got to the—

Mr. Pickering: Mr. Examiner, I do not think that this is responsive to my question.

Trial Examiner: Just a moment.

Mr. Pickering: I move to strike what the witness has said. I asked him a question that can be answered perfectly obviously either yes or no. Now, if this witness will desire to qualify that answer after he gives me an answer either yes or no, he may, but I submit I am entitled to a yes or no answer on a question of that nature.

Trial Examiner: I am going to let him finish. He is trying to tell the circumstances. Go ahead with your answer.

Mr. Pickering: Mr. Examiner, I submit my question was not—I did not ask him what the circumstances were.

Trial Examiner: I said I am going to let him finish the answer the way he is giving it. He is giving us the circumstances. Go ahead.

A. The aprons that the picket captains had in their ~~car~~
 were all rolled up, and when we got to the place,
 374 Gillette, I took the apron under my arm and went
 to the American Iron truck where it was there at the
 dock and I didn't put it on or unroll it until I got to the
 truck. When I unrolled it I just put it on and I didn't
 take time to read exactly the words that was upon it, but
 I knew it was a strike apron.

Trial Examiner: All right. Next question.

Mr. Pickering: Now may I have an answer to my question, Mr. Examiner?

Trial Examiner: I think you are not—the witness isn't getting a fair opportunity to express his opinion on it. Now give him a chance to get at this correctly.

Can you state that from your observation of the picket apron, can you state positively that those words, that bottom line, were on the apron that you were wearing?

The Witness: I couldn't state it that they were or they weren't.

Trial Examiner: All right, next question.

Mr. Pickering: Now, that wasn't my question, Mr. Examiner. My question was did he see—

Trial Examiner: All right, ask any question you want.

By Mr. Pickering:

Q. I'll ask you again, then, Mr. Mayo, did you see the words, "We do not ask anyone to cease work," on the picket apron that you wore either at Lee Way or Gillette?

Mr. Poulton: Don't answer the question. I believe that question has been answered before, Mr. Examiner.

Trial Examiner: No, I'll allow it. Go ahead.

Read the question to him.

(Question read.)

A. I didn't see the bottom words at that particular place when I put the apron on.

By Mr. Pickering:

Q. Did you see any words on the bottom part of this apron, or the picket apron that you wore which was similar to this apron I hold in front of you, which is Respondent Machinists Exhibit 1; did you see any words of any kind on the bottom part of this apron that you wore at Lee Way or Gillette in the same vicinity as these words appear on this apron that I hold in my hand where it states, "We do not ask anyone to cease work?" Did you see any words in that part of the apron? A. I don't remember just exactly whether I do or not remember.

Trial Examiner: Well, I think you testified you are sure that the pickets at the plant itself wore aprons which did not have that bottom line on it, is that correct?

The Witness: I think that's correct.

389

James P. Smith.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you give your full name and address for the reporter, please. A. James P. Smith, 1100 Southwest 49th, Oklahoma City.

Q. Mr. Smith, you are the Santa Fe freight agent here in Oklahoma City, is that correct? A. Yes, sir, I am.

Q. And you are in charge of Santa Fe's Oklahoma City operations? A. Yes, sir.

Mr. Poulton: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

By Mr. Pickering:

Q. Now, Mr. Smith, in connection with your job at Santa Fe, do you know whether or not there was an occasion about the 16th of September when a driver, Santa Fe driver, refused to haul a shipment of American Iron freight? A. Santa Fe road operations refused to—

390 Santa Fe road operator refused to pull his schedule that had American Iron shipments located on his trailer.

Q. What was that road operator's name? A. It was Mr. Greenstreet.

Q. Is that Mr. O. J. Greenstreet? A. O. J. Greenstreet.

Q. Do you know who loaded the freight upon the trailer that Mr. Greenstreet was to pull? A. It was on September 16, and the shipment was loaded by the dock personnel.

Q. Do you happen to know the name of the dock personnel who handled the American Iron shipment? A. It was Mr. Hert acting in the capacity of checker, and I believe at that time a casual laborer employee by the name of Rogers, Jiminy Rogers.

Q. As I understand, Mr. Greenstreet's home terminal is Wichita, Kansas, is that correct? A. That is correct.

Q. Now, was there any refusal on the part of any road operator to haul American Iron freight after this occasion?

A. Yes, sir, there was.

Q. When was that, please, the next such refusal?

Mr. Grayson: If the Trial Examiner please, we have admitted all this. I don't see what the purpose of it is.

397 Trial Examiner: The question was what did you do about the shipments after Greenstreet refused to haul the trailer.

A. We unloaded the shipments and they were placed in the boxcar. Those boxcars were carted to Wichita, Kansas. That was the only—

By Mr. Pickering:

Q. The shipments went by rail then, is that correct? A. That is correct. That is the only shipments that were in those, in that car.

Q. Who unloaded the shipments off of the trailers before they were put in the railway cars? A. They were unloaded by our general foreman Mead.

Q. Now, on this occasion on September 17 you stated that after Mr. Foster left the American Iron shipment was checked and received for by Checker Goho.

398 Q. Did he do that without instructions from you or with instructions? A. No, sir, I instructed him. He was the first checker that I instructed and he accepted the bill of lading without any protest.

Q. Do you ordinarily have to instruct checkers to check and receipt for freight brought to Santa Fe docks? A. No, sir.

Q. Was there any occasion after this when American Iron freight was brought to Santa Fe docks and checkers refused to receipt and check the freight? A. Yes, sir, henceforth from that date the dock personnel refused to handle it.

400 Q. Now, from the first occasions that the dock employees at Santa Fe refused to handle American Iron freight did you ask any of them why they were refusing? A. Yes, sir, I did.

Q. What did they tell you upon the first occasion that you asked them why they were refusing to handle American Iron freight? A. They told me that they had been instructed not to handle it. I asked them from where these instructions came and on the first three or 401 four occasions I was told that their instructions came from their steward.

Q. All right, sir, on these first three or four occasions did any of the dock employees that you asked the reasons

for not handling American Iron freight mention anything at all about their contract? A. No.

408 Q. Did you ever make any recommendations to any of your superiors concerning the refusal of the dock employees to handle American Iron freight? A. Yes, sir, I did.

Q. What did you recommend? A. Well, on the few occasions that I attempted to get their cooperation I had 409 been advised by other terminal managers during this period that their dock people were handling their shipments, that the road operators were pulling the runs so I recommended that we take a little more positive action and state our position to the employees where there could be no doubt in their minds that we were going to handle every shipment that American Iron offered to us.

Q. Did you at any time make any recommendations other than that for any other disciplinary action insofar as their refusal to handle American Iron shipments? A. No, sir.

Mr. Pickering: That's all.

Cross-examination.

By Mr. Grayson:

Q. Mr. Smith, it has been stipulated here in the record that your company has a contract with Local Teamsters 886, in which there is a clause commonly referred to as a hot cargo clause, Article 4, Section (b), I believe it is: You are familiar with that provision of the contract, are you not? A. I am familiar with it, yes.

Q. Pardon? A. I am familiar with that Article 4, Section (b). I am also in making that acknowledgment, I don't want to leave the impression that I agree with your interpretation of that Section (b). Now, there's no argument about Section (a) of Article 4.

411

James W. Hancock.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Pickering:

Q. Would you state your full name for the reporter, please. A. James W. Hancock, better known as Bill.

Q. And your address? A. 5416 North Mueller, Bethany, Oklahoma.

Q. And you are employed by American Iron and Machine Works Company as a mailman, is that correct? A. Yes, sir.

Q. During the period of time that American Iron was on strike from September 15 through October 21 it has been testified that you hauled freight of American Iron to the premises of Santa Fe, Lee Way, Hall, T. I. M. E. and Gillette here in Oklahoma City, is that correct? A. That's right.

Q. Would you tell us, please, if pickets followed you to the premises of Santa Fe, Lee Way, D. C. Hall, Gillette and T. I. M. E. on the first occasion that you had to haul American Iron freight to those carriers' premises after the strike began? A. Made all of them.

412 The Witness: Yes, sir.

Trial Examiner: From the time, first day of the strike?

The Witness: It was about the second day, I believe, after the strike started they followed me, the 16th or 17th; I don't know which.

By Mr. Pickering:

Q. All right, now, Mr. Hancock, were those Machinists' pickets? A. Yes, sir.

Q. Did they picket any while you were at the premises of Hall, Santa Fe, Gillette, T. I. M. E. and Lee Way? A. They did.

Mr. Poulton: I don't know whether this is relevant as really preliminary or not. I don't want to confuse it. We have already admitted that, no question here.

By Mr. Pickering:

Q. Now, on this first day which you place about September 16th or 17th, so that you hauled freight to carriers here at Oklahoma City, did you also go to the premises of J. H. Rose? A. I don't recall whether I went to Rose that day or not, that I made all those places.

Q. Did you have occasion to go to the premises of J. H. Rose? A. Oh, yes, I went out there several 413 trips.

Q. Did pickets ever follow you to the premises of J. H. Rose? A. Yes.

Q. Did they ever picket at the premises? A. No, stopped at the gate, the drive-in, at the end of the drive where they go in.

Q. Now, on this first day that you place about September 16th, the pickets followed you to the premises of Hall, Lee Way, T. I. M. E., Gillette and Santa Fe, could you tell us, please, who those pickets were who followed you on that first day? A. On the first day?

Q. Yes, sir. A. Well, the first day, the first trip George Wimberly, and I think it was Leo Feltner the first trip followed us.

Q. Now, did either Leo Feltner or George Wimberly say anything to any employees of any of the carriers that I have just named? A. Well, George Wimberly got out of the car and beat me up on the dock before I could get up there with my freight bills and talked to somebody, I don't know just who he talked to before I could get up there.

Q. You would see him talking with someone, is that right? A. Yes, sir.

Q. Did you overhear the conversation? A. No, I did not.

414 By Mr. Pickering:

Q. Did Mr. Wimberly go up on the dock at any of the other carriers on your first trip out other than Santa Fe?

A. Yes, sir, each dock he went up on the dock.

Q. Did he go up on the dock at Lee Way? A. I don't remember now whether at Lee Way—I don't remember seeing him go up on the dock there, but he went the other places.

Q. Did he go up on the dock at Gillette? A. Gillette, yes.

Q. Did you see him talking with any of the Gillette employees? A. No, I didn't.

Q. Pardon? A. I didn't see him talking to them; I just seen him go up on the dock at Gillette.

Q. Did he go up on the dock at T. I. M. E.? A. Yes.

Q. Did you see him talking to any of the employees at T. I. M. E.? A. He just talked to some of the boys there on the dock and then went back to his car.

Q. In relation to when you backed up to the dock and got your, or unloaded your freight, American Iron 415 freight, at T. I. M. E., did you see Mr. Wimberly talking to the T. I. M. E. employees before or after you had unloaded your freight? A. He talked to them before I got up on the dock. He beat me up there.

Q. Now, on that occasion did the T. I. M. E. employees accept your freight? A. I believe that first trip, I believe this fellow that was, that testified here, I believe he accepted my freight the first trip. I am pretty sure he did.

Q. All right, sir. Do you recall what happened on your first trip at Santa Fe? A. Well, we—that part we got through with. Santa Fe was the first stop on this first trip. That's where Wimberly went up on the dock and talked to somebody. I just mention it. I don't know who they talked to.

Trial Examiner: Counsel's question was did they accept your freight at Santa Fe?

The Witness: Yes, sir.

416 By Mr. Pickering:

Q. Now, Mr. Hancock, on this second trip you made, did you go to Santa Fe? A. Second trip, yes, sir.

Q. What did Mr. Foster do when you got to Santa Fe?

A. Well, he got up on the dock and was talking to someone up there and I went on in the office to get my freight bills blocked, see, then, out to find the checker and he was talking to Mr. Smith right by my truck.

Q. All right, what did you hear Mr. Foster say to Mr. Smith? A. Well, I didn't hear what he said. I just heard a few words that Mr. Smith said.

426 Mr. Poulton: At this time the Respondent Machinists would like to make a motion to dismiss the complaint and bill of particulars so far as it alleges that George Wimberly, on or about February 16 at the Oklahoma City terminals of Santa Fe, Gillette, T. I. M. E., Hall and Lee Way, made oral requests to the employees in an effort to have them refuse to accept, load or unload or otherwise handle American Iron freight.

That's my first motion.

Trial Examiner: What about that, Mr. Pickering?

Mr. Poulton: There's no evidence to that effect.

Mr. Pickering: It is my recollection that there is evidence, Mr. Examiner, and I do not purport to try to remember all the evidence that has been given here in the three days case.

Trial Examiner: Well, I'll have to reserve decision on that. I'll review the record carefully and, of course, you gentlemen can do the same and point that out to me. At the present time I would say my recollection favors Mr. Poulton's motion, but I don't want to give a final ruling on it.

427 Mr. Poulton: I would like to save myself in calling the extra witness, but I still don't think it is necessary.

Number two, I would like to make a motion to dismiss the complaint and bill of particulars so far as it alleges that Edd Foster, on or about September 16, 1954, orally requested the employees to refuse to accept, check, load or unload or otherwise handle American Iron freight at Santa Fe. If my recollection is correct, and I believe it is, the entire evidence in the record at this time is that Mr. Foster talked with Mr. Smith, who is a supervisory employee. There is evidence in the record that other employees may have been around, but there is no evidence on the record whatsoever that the other employees overheard the conversation.

Mr. Pickering: There is evidence on that, Mr. Examiner, that they were close enough to overhear it. It was a normal tone of voice and the Examiner will have to make a finding and an inference that can be drawn that they did overhear it.

Mr. Poulton: Sir, the General Counsel has the burden of proof in this case. We do not run on surmise or deduction whether they heard it or didn't hear it is no evidence that they did.

Mr. Pickering: I might state, in connection with that, Mr. Examiner, there is a case by the Board which holds that where statements are made to supervisory employees that are overheard by employees it can be considered inducement and encouragement of the employees, even though the statement itself was directed to a supervisor.

428 Mr. Poulton: I will not deny there is such a case, but I believe in the case you will find there was evidence that the employees overheard statements.

Trial Examiner: I'll reserve decision on that motion and you gentlemen can, of course, cite authority.

Mr. Poulton: I would like to make a motion to dismiss the allegations in the complaint and the bill of particulars

to the effect that Edd C. Foster on or about September 22, 1954, induced, orally induced the employees of D. C. Hall to refuse to accept, handle, et cetera, et cetera, on the grounds the only evidence in the record at this time is that Edd Foster casually talked to the dock hand. There is nothing in the record whatsoever to the effect that he requested these employees, the employees to cease handling the freight.

Trial Examiner: Any comment on that?

Mr. Pickering: Where was that at?

Mr. Poulton: That's the 22nd at Hall.

Mr. Pickering: There is evidence that after he talked to the dock hand there was, might have been a refusal to handle.

Mr. Poulton: There is no evidence, though, any oral request, sir.

Mr. Pickering: From that evidence it is the position of General Counsel that inference could be drawn that that was the subject of his conversation.

Mr. Poulton: As I understand now, General Counsel is trying to build the case up on surmise and conjecture.

Trial Examiner: That's a matter of argument, but certainly I want to see authority on that, on all these motions, of course. I'll reserve decision on this one, too.

Mr. Poulton: I don't believe there is any evidence in the record whatsoever that Mr. Foster talked to any of the employees in an effort to induce them to refuse to accept, check, load or unload or otherwise handle American Iron freight at Lee Way on September 17. Mr. Gray testified it was on September 16. There is a conflict between whether it was the 16th or 17th, but either on both days there is no showing there was any oral request or inducements. Now—

Trial Examiner: When you finish your motion, just let us know.

Mr. Poulton: All right.

Mr. Pickering: On that, as far as the dates were concerned, Mr. Examiner, the allegations are on or about certain days. The allegations do not go to a particular day.

Trial Examiner: The question is whether or not he made any such statement at Lee Way.

Mr. Poulton: There are two allegations in here, one on the 16th and one on the 17th. There is only proof of one day there was—he made an allegation to Smith. Furthermore, I think the allegation to Smith should be dismissed, anyhow; a supervisory employee. I don't believe—

430 Trial Examiner: Let me say this as to all the matters of evidence, I suggest you make all of them and frankly my feeling right now is unless there is a concession I will have to reserve decision and scrutinize the record.

Mr. Poulton: Let me put it this way, the Respondent Machinists would move to dismiss the complaint and the bill of particulars as to Section 8, the part of Section 8 I should say that is not admitted, and the bill of particulars, Section 1 also—

Trial Examiner: Section 8 of the complaint.

Mr. Poulton: That's correct. Mr. Examiner, let me say this, it wouldn't be the entire Section 8, it would be Section 8 starting with the word "coincident with the maintaining of picket or pickets," et cetera. Also the Respondent Machinists would move to dismiss Paragraph II of the bill of particulars on the same grounds as stated previously. The Respondent Machinists would also move to dismiss Section 9 of the complaint on the grounds that the evidence is not sufficient to support the allegations. As I remember the evidence it is two words, union card, and that is all.

And over-all there is an over-all dismissal, the Respondent Machinists would move to dismiss the complaint in its entirety in that the General Counsel has the burden of proof and the respondents do not believe that he has met that burden at this time. So ends my motions.

431 Trial Examiner: I will reserve decision on those motions.

Any motions on the part of the Teamsters?

433 **Robert Pickett.**

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Poulton:

Q. Will you state your name and address for the record, please. A. Robert Pickett.

Q. Your address, sir? A. 2620 Moulton Drive, Oklahoma City.

Q. Mr. Pickett, did you ever accompany the pickets 434 to the various carriers, such as T. I. M. E., Lee Way, Santa Fe, Gillette and Hall? A. Yes, sir.

Q. Did you give the pickets an apron to wear when they got out of your car, sir? A. Yes, sir.

Q. Could you identify this apron for me, sir? A. Yes, sir.

Q. Is this the apron that you handed them, sir? A. Yes, sir.

Q. This apron or a similar apron? A. That is one similar to it, had the same writing on it.

Q. Did it have this bottom line on it, sir, "We do not ask anyone to cease work"? A. Yes, sir.

Q. Approximately how many times, to your knowledge, did the pickets wear this apron, sir, while you were with them? A. While I was with them I imagine 10 or 12 times.

Q. Ten or twelve times. Did you, while you were on picket duty, see any other apron be used, sir, on the roving pickets? A. Yes, sir.

Q. What apron was that, sir? A. It was the one like we wore.

Q. American Iron? A. American Iron front.

435 Mr. Poulton: I would like to offer this now, Mr. Examiner.

Trial Examiner: It is in.

Mr. Poulton: It is in evidence, but in evidence for limited purpose; it was the apron that Mr. Gray identified at the injunction proceeding. I would like to offer it now.

Trial Examiner: That's in for whatever relevancy it has here.

Mr. Pickering: Mr. Examiner, I believe that you are mistaken on that. As I understood your ruling at the time, and certainly as far as the exhibit going in without objection from me it was for a limited purpose that that being the picket apron which was used in the previous hearing here.

Trial Examiner: I can't go back and—

Mr. Poulton: That is correct, Mr. Feiler. That's why I offered it again for all purposes.

Mr. Pickering: I object to the introduction of this for any other purpose than that.

Trial Examiner: Overruled. I will allow it in evidence.

By Mr. Poulton:

Q. Now, Mr. Pickett, did you accompany a picket to Lee Way on September 17? A. I don't—I couldn't tell you the date, whether it was the 17th.

Q. Did you go to Lee Way at any time? A. Yes, sir.

Q. It has been stipulated here that the strike at 436 American Iron started on September 15. Could you tell me how many days after the start of the strike that you went to the premises of Lee Way with the picket? A. Three or four. I don't know for sure just exactly.

Q. But you did go to Lee Way? A. Yes, sir.

Q. Did you talk to anyone there, sir? A. I talked to some man on the doek. I don't know who he was.

Q. You say you talked to some people at Lee Way, is that correct, sir? A. Yes, sir.

Q. Do you remember what you said to those people, sir? A. I just asked them if the shop steward was around there.

Q. Did you say anything else? A. Well, that is, a guy wouldn't tell me and I asked another boy as I started to leave and asked him who the guy was that signed for it.

Q. Do you remember ever seeing the shop steward, sir? A. Not that I know of, no, sir.

Q. Do you know a Mr. William R. Hall? A. No, sir, I don't.

Q. Were you present at the injunction hearing October 16, 1954, in this courtroom? A. Yes, sir.

Q. Do you remember a gentleman pointing you out 437 at that hearing, sir? A. Yes, sir.

Q. Do you remember whether that was Mr. Hall or not? A. I think it was, pretty sure it was.

Q. Do you know what Mr. Hall does at Lee Way, sir? A. No, I don't.

Q. Do you remember seeing him at Lee Way, sir? A. Yes, I remember now seeing him.

Q. Did you talk to him, sir? A. He's the guy that I asked who was the guy that was going to sign for the freight and he wouldn't tell me.

Q. Did you say anything else to him? A. No.

440

Redirect examination.

By Mr. Poulton:

Q. Calling your attention to September 17, sir, were you at approximately 3:00 p. m. the picket captain on duty at the American Iron premises? A. Yes, sir.

Q. And those premises are located where, sir? A. 518 North Indiana.

Q. Did you talk to an employee of Santa Fe Truck Company there, sir? A. Yes, sir.

Q. At approximately 3:00 p. m.? A. Yes, sir.

Q. 3:00 p. m.? A. Yes, sir.

Q. What did he say to you and what did you say to him? A. Well, he just wanted to know where he could find Edd Foster and I told him I didn't know.

Q. Did he say anything else? A. Yes, he told me about receiving some American Iron products down there the day before and when he came in, why, the boys were up in an uproar about it. He said that they unloaded this, took them about three hours to get it off the truck before a driver would take it out.

Q. Did he say anything else? A. Well, we talked a little bit. I don't remember just what all it was about, but I do remember him saying that they'd try to stick with us during the strike.

442 Q. Do you remember asking him not to handle freight for American Iron? A. No, sir, I didn't.

Q. Did you talk to him about the secondary boycott by any chance? A. Well, I told him I didn't know too much about it right then; you ought to see Edd to talk about it, find out about that.

Mr. Poulton: I would like to have this marked.

443 (Thereupon the document above referred to was marked Respondent Machinists' Exhibit No. 2 for identification.)

Mr. Poulton: I believe that the General Counsel will stipulate with me that this is an authentic copy of the agreement entered into on October 21, 1954, between the American Iron and Machine Works Company and the International Association of Machinists, is that correct, sir?

Mr. Pickering: That's right.

Trial Examiner: I think that's been marked Respondent Machinists' 2.

Mr. Pickering: The document that he holds in his hand is authentic.

Mr. Poulton: I would like to offer it in evidence.

Mr. Pickering: Would you like to have it marked first?

Trial Examiner: It's marked Respondent Machinists' 2 for identification. It is offered in evidence. Any objection?

Mr. Pickering: Yes, sir. That document, Mr. Examiner, has nothing at all to do with the issues of anything that is framed by the answer or the complaint or any other pleadings in this case, any testimony in this case; it has been stipulated that the strike terminated on October 21, 1954, and I will stipulate with Mr. Poulton that it terminated upon the completion and signing of that, of an agreement. However, the terms of any agreement they have reached have nothing whatsoever to do with 444 any of the issues in this case.

Trial Examiner: All right, in view of the stipulation that there was an agreement between the company and the Machinists, do we need the agreement?

Mr. Poulton: Yes, sir, I think so. There is a provision I am trying to find now, Article 26, which I think goes to my argument on mootness. It's a no-strike and lockout clause. I think it fits very well on my mootness argument.

Trial Examiner: It has a no-strike and lockout clause?

Mr. Poulton: That's correct. I think that's important.

Mr. Pickering: I fail to see how any provision that might be in this contract would have anything to do whatsoever with the issues framed by the pleadings in this case and testimony and the evidence so far.

Trial Examiner: How would the no-strike and lockout clause be relevant?

Mr. Poulton: I think it stops us from striking. Let me read it.

Mr. Cotter: By way of summary it provides that there would be no strike or lockout excepting in the event one party or the other should fail to observe an arbitrator's award.

Mr. Poulton: And also, I would like to submit, that the duration clause is another important factor in the argument on mootness, sir.

Trial Examiner: Right now I tend to lean towards 445 Mr. Pickering's point. However, the issue has been raised, it has been raised before the Board which

gave a preliminary ruling to turn it down with a request to appeal my ruling. I will allow it in and only for the purpose of giving the Machinists a chance to brief the point.

Mr. Cotter: Can't you handle it as a rejected exhibit?

Mr. Pickering: I think, Mr. Examiner, in view of your ruling on his question he raised as to mootness that that would be the proper way to handle this, that it go in the rejected exhibit file and with that explanation in the record.

Mr. Poulton: Let me say the rejected exhibit file is not to be considered unless the ruling on the exhibit is overruled by the Board.

Trial Examiner: I will allow it in so that this question of mootness can be briefed.

(The document heretofore marked Respondent Machinists' Exhibit No. 2 for identification was received in evidence.)

Mr. Pickering: Mr. Examiner, might your admission of this then be limited strictly to the question that Mr. Poulton raised as to the mootness of the case against the Respondent Machinists which the Examiner overruled and his appeal before the Board, or his request for an appeal was denied by the Board and for no other purpose?

Mr. Poulton: I will so stipulate to that, Mr. Pickering.

446 Mr. Grayson: Now, Mr. Pickering's statement was you limited this to the question of mootness that Mr. Poulton raised. The Teamsters raise the same question and I want it to be applied likewise to the Teamsters.

Trial Examiner: All right, the contract is received only on the question of mootness and primarily gives the parties a chance to brief the point.

* * * * *

Ralph Mitchell.

a witness called by and on behalf of the Respondent Teamsters, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Grayson:

Q. State your name. A. Ralph Mitchell.

Q. Mr. Mitchell, you have been sworn as a witness, have you not? A. I have.

Q. Where do you live? A. 200 Southeast 26th Street, Oklahoma City.

Q. What is your job or occupation? A. Business representative for the Teamsters Union.

Q. As business representative for Teamsters Union, 447 over what particular division do you have charge of? A. Motor freight division.

Q. Mr. Mitchell, you have been present during the entire hearing of this case, is that right? A. That's right.

452 Q. Were you here when Wilkerson, the dock steward for Hall, testified? A. I was.

Q. Do you recall that he testified something to the effect that you told him that a union member might lose their book or card, do you remember him testifying to that? A. I did remember.

Q. Well, do you remember talking to Mr. Wilkerson during the strike? A. I do.

Q. Relate, if you know, the conversation which you had with Mr. Wilkerson. A. Well, I walked up on the 453 dock and Mr. Wilkerson asked me, "Can we handle the freight?" I said, "Mr. Wilkerson, you are in violation of the contract as I interpret it."

457 Mr. Poulton: I would like to make a motion to dismiss the complaint in its entirety.

Trial Examiner: I take it you people renew the motions previously made?

Mr. Poulton: Yes, renew the motions I made at the close of the General Counsel's direct case.

Trial Examiner: I will reserve decision on that. Do you people wish to offer oral argument? I know there are a lot of involved issues.

556-588

Teamster's Exhibit No. 1

AGREEMENT

Oklahoma City General Drivers

Warehousemen and Helpers

Local

886

[A. F. of L.]

Local Freight Forwarding

and

Local Cartage

for

Oklahoma City and Vicinity

1952 - 1955

Union Label No. 45

ARTICLE 4

PICKET LINE

(a) The Union and the Employer agree that it shall not constitute a breach of this Agreement for any employee or Union member covered herein to refuse to cross a picket line or to refuse to enter upon the premises of an Employer if such refusal does not constitute a violation of the Labor Management Relations Act of 1947.

(b) Members of the Union shall not be allowed to handle or haul freight to or from an unfair company; provided, this is not a violation of the Labor Management Relations Act of 1947.

531-564

Machinist's Exhibit No. 2**AGREEMENT**

Between the

AMERICAN IRON & MACHINE WORKS COMPANY

and the

INTERNATIONAL ASSOCIATION OF MACHINISTS

September 15, 1954

AGREEMENT

THIS AGREEMENT, entered into this 21st day of October, 1954, by and between the AMERICAN IRON AND MACHINE WORKS COMPANY OF OKLAHOMA CITY, OKLAHOMA, hereinafter referred to as the "COMPANY", and local Lodge No. 850 of the INTERNATIONAL ASSOCIATION OF MACHINISTS, hereinafter referred to as the "UNION".

* * * * *

ARTICLE 26**STRIKES AND LOCKOUTS**

Section 1. The Union will not call or sanction any strike or concerted stoppage during the term of this agreement except for (1) The Company's failure to abide by the arbitration clause of this agreement, or (2) The Company's failure to comply with any decision of any Board of Arbitration established hereunder within five (5) working days after such decision of a Board of Arbitration, or (3) Failure of the parties to reach agreement on Wage Reopening, Article 38, hereof.

Section 2. Should a strike or concerted stoppage of work by employees of the Company other than those permitted by Section 1, hereof occur during the terms of this agreement, the Union, within forty-eight (48) hours after receipt of a written notice from the Company, shall be obliged to do the following things only:

(a) Advise the Company in writing that the strike or stoppage has not been called or sanctioned by the Union.

(b) Post copies of the following notice on Bulletin Boards in the Plant:

"We have been advised by the American Iron and Machine Works Company that a strike has occurred in the plant. Inasmuch as no strike or stoppage has been called or sanctioned by the Union, if you are engaged in any such strike or stoppage, you are hereby instructed to return to work immediately.

LOCAL LODGE NO. 850, of the INTERNATIONAL ASSOCIATION OF MACHINISTS BY

THIS NOTICE IS POSTED IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT BETWEEN THE COMPANY AND THE UNION

Section 3. The obligation of the Union shall be limited to the performance of the obligations required by Section 2, and upon compliance by the Union with the provisions of Section 2, of this Article of the Agreement, the Union and its officers, agents and members shall have no further liability during the term of this contract or thereafter, for any damage suffered by the Company arising from or out of any stoppage or strike.

Section 4. The Company will not lock out any or all of its employees during the term of this Agreement.

ARTICLE 38

DURATION

THIS AGREEMENT shall become effective on the 15th day of September, 1954, and shall remain in full force and effect for a period of two (2) years. At the end of two years and at the end of each yearly period thereafter, this agreement shall be renewed automatically for periods

of one (1) year unless either party gives written notice of a desire to modify, amend, or terminate same at least sixty (60) days prior to the yearly effective date of this agreement.

It is agreed between the parties that this Agreement, as applied to basic wage rates only may be reopened for negotiation by either the Company or the Union by giving 15 days written notice to the other party prior to March 15, 1955, September 15, 1955, or March 15, 1956, of a desire to negotiate concerning basic wage rates only.

It is further agreed that if this agreement is reopened by either party giving proper notice 15 days prior to September 15, 1955, as provided above, and no agreement is reached within sixty (60) days from the date of the notice to reopen, this Agreement may be terminated upon five days written notice by either party to the other.

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 13,394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 886, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 13,406

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

Filed August 3, 1956.

Prehearing Conference Stipulation

Pursuant to Rule 38 (k) of the Rules of this Court, the parties, subject to the approval of the Court, do hereby stipulate and agree as follows with respect to the issues, the dates for the filing of the briefs and joint appendix, and the contents of the joint appendix:

I

STATEMENT OF THE ISSUE

1. Whether the Board properly concluded that petitioner Drivers' inducement or encouragement of employees of common carriers not to handle freight brought to the carriers' docks by a primary employer engaged in a strike with Machinists union was violative of Sections 8 (b) (4) (A) of the National Labor Relations Act, as amended, notwithstanding the existence of a clause in said petitioner's collective bargaining agreement with such carriers stating that the carriers' employees "shall not be allowed to handle or haul freight to or from an unfair company."

2. (a) Whether, as a matter of law, the Board properly concluded that petitioner Machinists violated Section 8 (b) (4) (A) of the Act by picketing the primary employer's trucks at the docks of the common carriers, and by oral appeals to the employees of the carriers not to handle the primary employer's freight at the carriers' docks;

(b) Whether, in any event, the Board's findings in this regard are supported by substantial evidence.

3. Whether the Board erred in not dismissing the complaint against the Machinists because of mootness.

II.

THE BRIEFS AND JOINT APPENDIX TO BRIEFS

1. Each petitioner will file and serve its opening brief on or before October 1, 1956. The Board will file one brief in response to petitioners' briefs, which will be served on or before November 1, 1956. Each petitioner shall file and serve its reply brief, if any, on or before November 21, 1956.

2. The joint appendix shall consist of:

A. The following documents contained in the record heretofore certified herein:

(1) The Board's Decision and Order, and the Trial Examiner's Intermediate Report, in Board Cases Nos. 16-CC-37 and 16-CC-48.

(2) The complaint and answer in Case No. 16-CC-47.

(3) The complaint, bill of particulars, and answer in Case No. 16-CC-48.

(4) Board order of April 19, 1956, denying motion for reconsideration of Board's Decision and Order.

B. Such portions of the transcript of testimony in the aforesaid cases as may be designated by the respective parties, as provided below.

3. The parties will, on or before September 3, 1956, exchange designations as to the portions of the transcript of testimony to be printed in the joint appendix. The joint

appendix, to be printed by a printer mutually agreed upon, will be filed with the petitioners' opening briefs, on or before October 1, 1956.

4. It is further agreed that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed to the same extent and effect as if they had been printed, or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

Dated this 2 day of August, 1956.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**Order**

Upon consideration of the prehearing conference held before me and of the prehearing stipulation presented by counsel for all parties to these cases, it is

ORDERED that the aforesaid prehearing stipulation be approved and that the Clerk be, and he is hereby, directed to file same forthwith.

It is FURTHER ORDERED that the aforesaid prehearing stipulation and this order be printed in the joint appendix and shall govern further proceedings in this Court unless amended by further order of this Court.

Dated: August 3, 1956.

195 In United States Court of Appeals for the District
of Columbia Circuit

No. 13,394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL NO. 886, AFL-CIO, PETITIONER

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13,406

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS,
AFL-CIO, PETITIONER

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITIONS TO REVIEW AND SET ASIDE, AND ON REQUEST FOR
ENFORCEMENT OF, AN ORDER OF THE NATIONAL LABOR RELA-
TIONS BOARD

[File endorsement omitted.]

Mr. Herbert S. Thatcher for petitioner in No. 13,394.

196 Mr. Louis P. Poulton, of the bar of the Supreme Court of
Maryland, pro hac vice, by special leave of Court, with
whom Mr. Plato E. Papps was on the brief, for peti-
tioner in No. 13,406.

Mr. Norton J. Come, Attorney, National Labor Relations
Board, with whom Mr. Marcel Mallet-Prevost, Assistant Gen-
eral Counsel, National Labor Relations Board, was on the
brief, for respondent.

Opinion

Decided May 9, 1957

Before PRETTYMAN, WASHINGTON and BASTIAN, Circuit
Judges

BASTIAN, Circuit Judge: These cases involve the issue as
to whether or not the so-called "hot cargo" clause¹ in a labor

¹The "hot cargo" clause in question reads: "(a) the Union and the Em-
ployer agree that it shall not constitute a breach of this Agreement for
any employee or Union member covered herein to refuse to cross a picket
line or to refuse to enter upon the premises of an Employer if such refusal

contract, wherein an employer agrees that his employees shall not be required to handle struck goods, is enforceable by the union party thereto, and whether it (the hot cargo clause) may be used as an excuse by a union on strike to conduct secondary picketing.

The facts, found by the Trial Examiner and the majority of the National Labor Relations Board are substantially as follows:

Local 850, International Association of Machinists (hereinafter called Machinists) became involved in an economic strike with the American Iron & Machine Works Company (hereinafter called American Iron) in September 1954. The strike lasted a little over a month, terminating upon the execution of a new collective bargaining agreement. During the course

of the strike the Machinists picketed the three plants 197 of their employer. They also picketed trucks of American Iron when they appeared at the loading platforms

of certain carriers. Representatives of General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local 886 (hereinafter called Teamsters) instructed the unloading personnel of the carriers that, under the terms of the hot cargo clause of the contract between Teamsters and the carriers, the employees were not to handle American Iron goods since they were struck goods. Certain of the carriers, despite the hot cargo clause, requested their employees to handle American Iron goods, whereupon Teamsters urged its members employed by those carriers to refuse to handle these goods. One carrier-employer took no action and did not request his employees to unload.

On charges filed by American Iron, the National Labor Relations Board (hereinafter called the Board) issued complaints, filed two days after the new contract between American Iron and Teamsters was signed, against both Teamsters and Machinists by reason of the alleged violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended.¹ A temporary injunction applied for by the Board

does not constitute a violation of the Labor Management Relations Act of 1947. (b) "Members of the Union shall not be allowed to handle or haul freight to or from an unfair company, provided, this is not a violation of the Labor Management Relations Act of 1947."

¹ 61 Stat. 141 (1947). "(b) If shall be an unfair labor practice for a labor organization or its agents *** (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal, in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials,

was denied by the United States District Court for the Western District of Oklahoma.

The complaints of the Board were referred to a Trial Examiner and, after a preliminary report and consideration of the exceptions thereto, the Board, by a majority vote, two of the five members dissenting, directed that Machinists and Teamsters cease and desist from inducing or encouraging the employees of the carriers, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron, or any other employer, where an object thereof was to force or require any employer or person to cease doing business with American Iron. Two of the three members of the majority of the Board were of opinion that the hot cargo clause was valid; the third member, concurring in the result of the Board's order, was of opinion that the clause was illegal and did violence to Section 8 (b) (4) (A). The two Board members comprising the majority held in effect that, even assuming that the Act itself does not prohibit the execution of a "hot cargo" clause, nevertheless, the Act does preclude enforcement of such a clause by appeals to employees.

From the order of the Board, Teamsters and Machinists filed these petitions asking this court to review and set aside the order; and, in its answer to the petitions, the Board requested that its order be enforced.

or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *

The exact language of the Board's ruling is as follows: * * * any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. Thus, while Section 8 (b) (4) (A) does not forbid the execution of a hot cargo clause, or a union's enforcement thereof by appeals to the employer to honor his contract, the Act does, in our opinion, preclude enforcement of such clause by appeals to employees, and this is so whether or not the employer acquiesces in the union's demand that the employees refuse to handle "hot" goods. Accordingly, in affirming the Trial Examiner, we do not find it necessary to rely as he did, on the fact, that the secondary employers herein did not acquiesce in the refusal of their employees to handle American Iron's freight. In our view, it is sufficient that there was direct inducement of such employees by Teamsters not to handle such freight, with an object of forcing the secondary employers to cease dealing with American Iron."

I. APPEAL IN NO. 13,394

PETITION OF GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL NO. 886

We agree with the four members of the Board who held that the hot cargo clause of the contract was not violative of the provisions of Section 8 (b) (4) (A) of the Act. This seems also to have been held by the Second Circuit in the so-called Conway case.¹ The majority of the Board held, following Sand Door & Plywood Co., 113 NLRB No. 123, that any direct appeal to employees by a union to engage in a strike or concerted refusal to handle a product is proscribed by the Act when one of the objectives set forth in Section 8 (b) (4) (A) is present. See note 3, *supra*.

With this we disagree. If the hot cargo clause is not violative of Section 8 (b) (4) (A), and we think it is not, such a ruling would, in practical effect, render nugatory the clause itself and would leave the employees without an adequate remedy. The Board urges that Section 8 (b) (4) (A) was enacted for the benefit of the public. We think that, although the public is involved, this section has for its purpose the protection of those persons who might be subjected to a secondary boycott, which is proscribed by the section.

We are not impressed with the argument that other adequate remedies are open to the employees of the union. Such remedies as are suggested by the Board seem to us to be totally inadequate and not such as are contemplated by the agreement by the employer in the hot cargo clause.

Here the Teamster's conduct only consisted of urging the employees of the carriers not to handle freight from a company which they considered unfair. This was exactly what the carriers had agreed their employees would not be required to do. If an employer may lawfully agree that its employees will not be required to handle freight from a struck company, and such

¹ *Rabouin v. National Labor Relations Board*, 195 F. 2d 906, 912 (2d Cir. 1952). There the court said: "The union cannot have committed an unfair labor practice under this section in regard to those employers who refused to handle Rabouin's shipments under the terms of the area agreement provision relating to cargo shipped by struck employers. Consent in advance to honor a hot cargo clause is not the product of the union's forcing or requiring any employer *** to cease doing business with any other person." § 8 (b) (4) (A). See also *Meier & Pohlmuth Furniture Co. v. Gibbons*, 233 F. 2d 296 (8th Cir. 1956), 143 F. Supp. 409 (1956); *Madden v. Local 442, etc.*, 113 F. Supp. 932 (W. D. Wis. 1953).

a situation arises, it is hard to see how it can be said that, simply because the employees do what they have the right to do, there was a strike or refusal to work. Nor can it be said that there was a "forcing", or requiring of an employer to cease doing business with another person, because the employer was only being compelled to live up to its own voluntary contract entered into in advance of the happening.

It cannot be argued that the actions of Teamsters constituted a sympathy strike or an illegal boycott. The actions taken might have been so regarded had there been no hot cargo clause. In sympathy strikes or illegal boycotts the employers are innocent victims of disputes with which they are not concerned. But where such a clause exists a different situation arises. The secondary employer has consented, knowingly and in advance, to the refusal of its employees to handle goods of the original employer.

It seems to us that the purpose of Section 8. (b) (4) (A) is to prevent injury to secondary employers in the disputes of others in which the secondary employers are not involved, and to prevent the forcing of such employers to stop doing business with a third person. But, in cases like this one, the secondary employer has agreed, as part of its bargaining contract with its own union, not to handle goods of an unfair employer; and it would seem that Teamsters employed the only effective means in its power to enforce the agreement.

I am authorized to state that Circuit Judge Washington agrees with the foregoing treatment of No. 13,394. He is filing an additional statement.

Circuit Judge Prettyman dissents for reasons which he will state separately.

The Board's order as to Teamsters will be set aside.

H. APPEAL IN NO. 13,406

PETITION OF LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS

Machinists urge a number of objections to the Board's findings and order. Among them is that the Board erred in not holding that Teamster's conduct was protected activity and, accordingly, Machinists' conduct in bringing the dispute to the knowledge of the members of the Teamsters' Union was not in violation of Section 8 (b) (4) (A).

Machinists were not parties to the contract between the carriers and Teamsters. But they contend that, since Teamsters and the carriers were parties to a contract containing the hot cargo clause, an essential element to a finding of violation of the Act is missing. Their position is that the handling of American Iron freight (struck goods) by the employees of the carriers was taken out of the scope of their employment by the hot cargo clause and therefore, Machinists could induce carrier employees to exercise their contract right not to handle struck goods. Machinists urge that, since Teamsters were free to honor Machinists' ambulatory picket line, their activity would not constitute encouragement or inducement of Teamsters to engage in a concerted refusal in the course of their employment to handle the goods of another employer.

We agree with the Trial Examiner and the Board majority that the conduct of Machinists must be evaluated independently of that of Teamsters and that the defenses available to Teamsters are not automatically available to Machinists. The latter are neither parties nor third party beneficiaries of the Teamsters-carrier contract.

The Trial Examiner and the Board majority found that after picketing of American Iron trucks began, while the trucks were on the premises of the carriers, dock employees of at least some of the carriers continued to handle American Iron products. Indeed, in some instances there were protests when supervisory employees attempted to move merchandise which would ordinarily be moved by the dock employees who were members of Teamsters. The Board found further that in most instances the dock employees continued to handle American Iron freight until instructed by representatives of their union not to do so.

Here, as above stated, Machinists had no connection with the contract containing the hot cargo clause and Teamsters' contract could not constitute the basis for a defense by Machinists.

We have examined the other contentions of Machinists, among them that the Board erred in not finding that the controversy was moot because the complaint was filed after the strike between Machinists and American Iron had been settled by execution of a new contract. A reading of the Act would

indicate that a complaint may be filed where the party charged "has engaged in or is engaging" in unfair labor practices. There can be no doubt that orders dealing with unfair labor practices have preventive as well as remedial effects.

203 Machinists also contend that their picketing at the carriers' premises was legitimate primary activity aimed only at American Iron employees. This contention is foreclosed by the fact that the findings of the Board were based upon disputed facts; and there is substantial evidence to sustain the findings of the Board.

Circuit Judge Prettyman concurs in the result in No. 13,406 but for different reasons, which reasons he will state in a separate opinion.

Circuit Judge Washington, dissents for reasons which he will state separately.

Order of Board in No. 13,394 set aside.

Order of Board in No. 13,406 affirmed.

PRETTYMAN, *Circuit Judge*, dissenting in part and concurring in part; I dissent from Judge Bastian's opinion and proposed judgment in No. 13,394, relating to the Teamsters. In a nutshell my view is that the hot cargo clause cannot be enforced by a strike, because such a strike or refusal to work is flatly forbidden by Section 8 (b) (4) (A) of the Act.

A strike is a concerted refusal by employees to do work the employer wants done. This is the purport of the opinions on the point.⁵ A refusal to work is likewise a declination directed at the employer. So, if an employer and his employees agree that certain work shall not be done, and it is therefore not done, there is no "strike" or "refusal to work". Section 8 (b) (4) (A) forbids only "a strike or a concerted refusal in the course of their employment".

204 It follows from the foregoing that, if an employer and his employees agree by contract that the employees need not handle certain goods, and both abide by their agreement, there is no "strike" or "refusal to work". But, if an employer, having entered into such a contract, thereafter refuses to abide by his agreement and directs his employees to handle the goods, and his employees refuse to do so, there is a strike or refusal to work. Such a strike or refusal to work,

⁵ See Restatement, Torts § 797 (1939), and the many cases collected under "Strike" in Words and Phrases, especially in the pocket supplement.

where an object is to force the employer to cease transporting the products of another producer, is forbidden by the statute. It may be that the right ~~conferred~~^{conferred} by Section 8 (d) (4) (A) cannot be nullified by contract. Section 7 rights cannot be contracted away. And it can be argued that, when Congress meant Section 8 rights to be subject to contract, it said so, as it did in Section 8 (a) (3). But I need not reach that question, and, since the answer, one way or the other, involves such sweeping considerations, I do not undertake it. On the other hand it may be that the hot cargo clause is a valid contract agreement between the carriers and their employees, and may validly be carried out by both parties. But even so, when a carrier refuses to comply with the contract, even though he is thereby violating the agreement, the Teamsters, his employees, may not strike or refuse to work in order to prevent the handling of the struck goods. I think the employees may not violate the statute in order to enforce their agreement with the carrier.

205. The sum of it is that Section 8 situations can legally be avoided, by contract or otherwise. Employers and employees need not so conduct themselves as to give rise to Section 8 prohibitions. But the terms of the statute cannot be nullified, by contract or otherwise. And so employers and employees cannot agree that even if a situation covered by the statute does occur the statute shall not apply.

I do not agree with the argument that the hot cargo clause has the effect of removing struck goods from "the course of their [the Teamsters'] employment". If such a construction could be placed upon the phrase in Section 8 (d) (4) (A), carefully contract draftingship could legalize without qualification any otherwise prohibited activity, e. g., the jurisdictional strike, the sympathy strike, and the wildcat strike, by artificially exempting the work involved from the course of the

¹ *N. T. Lumber Co. v. Labor Board*, 200 F. 2d 350, 84 L. Ed. 700, 60 S. Ct. 720 (1940). See also *Bethlehem Steel Company*, 80 N. L. R. B. 311 (1940). Strong evidence of the public interest in the problem is afforded by the fact that the motor carrier which honors a hot cargo clause thereby violates duties owed the public, breaches other contracts, and may well be in violation of another public law, Part II of the Interstate Commerce Act, 40 Stat. 543 (1926), as amended, 46 L. S. C. A. § 301 *et seq.* See the Examiner's Decision in *Galveston Truck Line Corp. v. ADA Motor Lines*, U. S. C. No. MC-3 (1922) (Adm. 1957), which involves actions of one shipping Teamsters, Local No. 886, and cooperating motor carriers.

employment governed by the contract. I think the statute cannot thus be nullified."

One of the carriers involved here adhered to its agreement and would not request its employees to handle the goods. Its employees did not strike. So in that particular case I would not affirm the cease and desist order. As to all the other carriers I would affirm as to the Teamsters.

206. I concur in Judge Bastian's proposed judgment in No. 13,406, relating to the Machinists. I also agree with his opinion in that regard, except that I add, since as I have pointed out I think the hot cargo clause could not be enforced by a strike, that it could not have been so enforced by the Machinists even if they had been parties to the contract.

WASHINGTON, *Circuit Judge*, concurring in Judge Bastian's opinion in No. 13,394, and dissenting from the latter's opinion in No. 13,406:

In the *General Drivers* case, I think Judge Bastian is correct in his treatment of the "hot cargo" clause and its effect. That clause is bargained for, and must be presumed to be balanced by concessions which the employer has obtained at the bargaining table. To say that the employer is free in his discretion to recognize or ignore the clause, when a concrete problem comes up, seems to me to encourage lawlessness in industrial relations. Once a valid contract has been made—and contracts such as this have been recognized as valid by the Board and the Second Circuit—both sides are entitled to rely on the prompt and faithful execution of its provisions. I therefore agree that efforts by the Teamsters to induce their own members to abide by the terms of the "hot cargo" clause embodied in their collective bargaining agreement are not violative of Section (8) (b) (4) (A).

The same reasoning impels me to the conclusion (in No. 13,406) that the efforts of the Machinists, directed toward the same end, are similarly outside the scope of the statutory

¹The Board's rejection of this argument on another ground, Spud Door & Plywood Co., 113 N. L. R. B. 1210, 1217 (1955), was cited with approval by the Sixth Circuit in *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters, Etc., et al.*, 241 F. 2d 447 (1957).

²In *National Labor Relations Board v. Local 3976, United Brotherhood of Carpenters, Etc., et al.*, 241 F. 2d 447 (1957), the Ninth Circuit reached the result suggested in this dissent. See also *National Labor Relations Board v. Local 11, United Brotherhood of Carpenters, Etc., et al.*, 241 F. 2d 447 (6th Cir. 1957).

207 • proscription. It is true that the Machinists are not a party to the contract which contains the "hot cargo" clause, and not a third-party beneficiary of it. But this does not mean that the existence of the clause has no effect on the lawfulness of the Machinists' conduct. The clause is evidence of the advance consent of the trucking companies that their employees are to refrain from handling struck goods. Because the employers have given this consent and because no basis appears in the statute for permitting this consent to be revoked on an ad hoc basis, the efforts of the contracting union (the Teamsters) to induce employees of the trucking companies to comply with the clause are upheld. The reasoning must be that what is being induced is not a "strike" or refusal to work" with an object of "forcing" or "requiring" an employer to cease doing business with another person within the meaning of Section (§) (b) (4) (A). This being so, I cannot agree that what is being induced is within the meaning of the statute when the inducing is done by the primary employees, the Machinists. The operative effect of the employer's consent is, in my view, the same regardless of who it is that reminds the secondary employees of the terms of their contract, and seeks to induce compliance with it.

208 In United States Court of Appeals for the District of Columbia Circuit

No. 13,394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 886, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

April Term, 1957

No. 13,406

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE, AND ON REQUEST FOR ENFORCEMENT OF, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before PRETTYMAN, WASHINGTON and BASTIAN, Circuit Judges

Judgment

May 9, 1957

[File endorsement omitted.]

These cases came on to be heard on the record from the National Labor Relations Board, and were argued by counsel.

On consideration whereof, it is ordered and decreed by this Court that the order of the National Labor Relations Board on review in these cases be, and it is hereby, set aside so far as it applies to General Drivers, Chauffeurs, Warehousemen, and Helpers Union, Local No. 886, and that it be, and it is hereby, affirmed so far as it applies to Local 850, International Association of Machinists.

Pursuant to Rule 38 (b) the respondent shall within 10 days hereof serve and file a proposed enforcement decree in case No. 13,406.

Dated May 9, 1957.

Per Circuit Judge BASTIAN.

Separate opinion by Circuit Judge Prettyman dissenting with respect to case No. 13,394 and concurring as to case No. 13,406.

Separate opinion by Circuit Judge Washington concurring as to case No. 13,394 and dissenting as to case No. 13,406.

209 In United States Court of Appeals for the District of Columbia Circuit

No. 13394

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 886, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 13406

LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Decree enforcing in part and denying in part an order of the
National Labor Relations Board*

June 7, 1957

Before PRETTYMAN, WASHINGTON and BASTIAN, Circuit Judges

This cause came on to be heard upon the petitions of General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO (hereinafter called Teamsters) and Local 850, International Association of Machinists, AFL-CIO (hereinafter called Machinists) to review and set aside an order of the National Labor Relations Board dated March 15, 1956. The Court heard argument of respective counsel on January 11, 1957, and has considered the briefs and the transcript of record filed in this cause. On May 9, 1957, the Court

being fully advised in the premises handed down its decision granting enforcement of the Board's order as to the Machinists, but denying enforcement against the Teamsters. In conformity therewith, it is hereby

Ordered, adjudged and decreed by the Court that Local 850, International Association of Machinists, AFL-CIO, and its officers, representatives, agents, successors and assigns, shall:

210 1. Cease and desist from inducing or encouraging the employees of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, Time, Inc. and Lee Way Motor Freight Lines, or any other employer, to engage in a strike or concerted refusal in the course of their employment to work on or handle freight consigned to or received from American Iron and Machine Works Company, or any other employer, where an object thereof is to force or to require any employer or person to cease doing business with American Iron and Machine Works Company.

2. Take the following affirmative action, which the Board has found will effectuate the policies of the National Labor Relations Act, as amended (hereinafter called the Act):

(a) Post at its business offices in Oklahoma City, Oklahoma, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region of the National Labor Relations Board, Fort Worth, Texas, after being duly signed by an official representative of the Machinists, shall be posted by the Machinists immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members of the Machinists are customarily posted. Reasonable steps shall be taken by the Machinists to insure that said notices are not altered, defaced, or covered by any other material. The Machinists shall also sign copies of the notice, which the Regional Director shall submit for posting at the Oklahoma City premises of Gillette Motor Transport, Inc., D. C. Hall Transport, Inc., Santa Fe Trails Transportation Company, and Time, Inc., said employers being willing. The Machinists shall also sign a copy of the notice for posting at Lee Way Motor Freight Lines;

211 (b) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, what steps the Machinists have taken to comply herewith.

It is further hereby ordered, adjudged and decreed that those portions of the Boards order applicable to General Dryers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO be and it hereby is set aside.

Dated June 7, 1957.

(S) E. BARRETT PRETTYMAN,
*Judge, United States Court of Appeals
 for the District of Columbia Circuit.*

(S) GEORGE T. WASHINGTON,
*Judge, United States Court of Appeals
 for the District of Columbia Circuit.*

(S) WALTER M. BASTIAN,
*Judge, United States Court of Appeals
 for the District of Columbia Circuit.*

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Appendix A to decree

NOTICE TO ALL EMPLOYEES

Pursuant to a decree of the United States Court of Appeals for the District of Columbia Circuit, enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby give notice that:

"We will not induce and encourage the employees of any employer other than American Iron and Machine Works Company to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where an object thereof is to force or require any employer or person to cease doing business with American Iron and Machine Works Company."

LOCAL 850, INTERNATIONAL ASSOCIATION
 OF MACHINISTS, AFL-CIO,
 (Labor Organization)

By _____
 (Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

214 [Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Nos. 273 and 324, October Term, 1957

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 886, AFL-CIO; AND LOCAL 850, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

Order allowing certiorari

October 14, 1957

The petitions herein for writs of certiorari to the United States Court of Appeals for the District of Columbia Circuit are granted, and the cases are consolidated for argument with No. 127. The Unions involved are allowed a total of 3 hours for oral argument and the National Labor Relations Board is allowed a total of one hour and a half for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.